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April 23, 2024

***Via Email and U.S. Mail***

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***Re: Correction and Removal Demand, DMCA Takedown Notice, and  
Preservation Demand***

Dear Mr. Gugar and Ms. West:

We are litigation counsel to Robert Hunter Biden (“Hunter” or “Mr. Biden”) in his claims against Fox News Channel and Fox News Digital (collectively “FOX”), as well as other joint tortfeasors, arising out of, among other things, their conspiracy and subsequent actions to defame Mr. Biden and paint him in a false light, the unlicensed commercial exploitation of his image, name, and likeness, and the unlawful publication of hacked intimate images of him.

***Correction and Retraction Demand for Debunked Bribery Allegations***

Since at least May 2023, as part of its politically-motivated attacks against the President and his family, FOX began advancing a bribery scheme allegation involving Hunter Biden and then-Vice President Joe Biden and a foreign national. Specifically, it was alleged that the scheme involved a \$5 million payment to Mr. Biden and another family member from a foreign national in exchange for a policy outcome. *See, e.g., The Explosive New Evidence of Biden Family’s Breathtaking Corruption*, FOX NEWS (May 10, 2023) available at <https://www.foxnews.com/opinion/explosive-new-evidence-biden-family-breathtaking-corruption>; Brooke Singman, *Joe Biden allegedly paid \$5m by burisma executive as part of a bribery scheme, according to FBI document*, FOX NEWS (June 8, 2023), available at <https://www.foxnews.com/politics/biden->

[allegedly-paid-5-million-by-burisma-executive.](#)

FOX's coverage of the bribery allegations was extensive. According to one report, "Fox Business' *Mornings with Maria* and Fox News' *Sunday Morning Futures*, featured references to the now-indicted FBI informant's claims at least 219 times in 2023, according to a Media Matters review of show transcripts. The former, a three-hour weekday program, featured 181 such claims over 62 episodes, while the latter broadcast the remaining 38 claims over 9 episodes." Matt Gertz, *Maria Bartiromo's Fox shows pushed the indicted FBI informant's story more than 200 times in 2023*, MEDIA MATTERS (Mar. 1, 2024), available at <https://www.mediamatters.org/fox-news/maria-bartiromos-fox-shows-pushed-indicted-fbi-informants-story-more-200-times-2023>. See also *id.* ("Fox host Sean Hannity's program aired 325 segments about Hunter Biden in 2023. Eighty-five of those segments, including 28 Hannity monologues, mentioned the allegation that Joe and Hunter Biden received \$5 million bribes, which the Justice Department now attributes to false claims by Smirnov.").

On May 10, 2023, the Acting Assistant Director of the Office of Congressional Affairs for the Federal Bureau of Investigation, in a public letter to the James Comer, the Chairman of the Committee on Oversight and Accountability for the U.S. House of Representatives, specifically warned that

***[i]nformation from confidential human sources is unverified and, by definition, incomplete.*** An FD-1023 form documents information as told to a line FBI agent. Recording the information does not validate the information, establish its credibility, or weigh it against other information known or developed by the FBI. The mere existence of such a document would establish little beyond the fact that a confidential human source provided information and the FBI recorded it. Indeed, the FBI regularly receives information from sources with significant potential biases, motivations, and knowledge, including drug traffickers, members of organized crime, or even terrorists.

See Letter from Christopher Dunham to James Comer (May 10, 2023), available at [https://www.grassley.senate.gov/imo/media/doc/fbi\\_to\\_grassley\\_comer\\_-\\_biden\\_1023\\_response.pdf](https://www.grassley.senate.gov/imo/media/doc/fbi_to_grassley_comer_-_biden_1023_response.pdf) (emphasis added).

But despite knowing that the source of the bribery allegation was an unverified and uncorroborated claim from a foreign national who was an FBI informant and that the allegation was dubious at best, FOX repeatedly reported that the source of the bribery allegation was "highly credible." See, e.g., Brooke Singman, *Person alleging Biden criminal bribery scheme is a 'highly credible' FBI source used since Obama admin: source*, FOX NEWS (June 2, 2023), available at <https://www.foxnews.com/politics/person-alleging-biden-criminal-bribery-scheme-is-a-highly-credible-fbi-source-used-since-obama-admin-source>; Brooke Singman, *FBI received 'criminal information' from over 40 confidential sources on Joe Biden, Hunter, James: Grassley*, Fox News (Oct. 23, 2023), available at <https://www.foxnews.com/politics/fbi-received-criminal-information-40-confidential-sources-joe-biden-hunter-jim-grassley> ("One critical FD-1023 in question was first reported on by Fox News Digital earlier this year. That form included reporting from a 'highly-credible' confidential human source who alleged a criminal bribery scheme between then-Vice President Joe Biden, his son Hunter Biden, and the founder and CEO of Ukrainian natural gas firm

Burisma Holdings, Mykola Zlochevsky.”); *see also* Matt Gertz, *Maria Bartiromo’s Fox shows pushed the indicted FBI informant’s story more than 200 times in 2023*, MEDIA MATTERS (Mar. 1, 2024), available at <https://www.mediamatters.org/fox-news/maria-bartiromos-fox-shows-pushed-indicted-fbi-informants-story-more-200-times-2023> (“Bartiromo’s programs were among the most prominent venues for the credulous dissemination of Smirnov’s claims. Media Matters found that she personally highlighted the informant’s story at least 126 times on her two shows in 2023. Bartiromo routinely treated the allegations as credible.”).

As you undoubtedly know, on February 14, 2024, a 37-page indictment was returned in the U.S. District Court for the Central District of California against Alexander Smirnov—the “highly credible” source behind the bribery allegations—for fabricating the bribery allegations and admitting that Russian intelligence was involved in seeding the smear. *See* U.S. Dep’t of Justice Press Release, *Grand Jury Returns Indictment Charging FBI Confidential Human Source with Felony False Statement and Obstruction Crimes* (Feb. 15, 2024), available at <https://www.justice.gov/sco-weiss/pr/grand-jury-returns-indictment-charging-fbi-confidential-human-source-felony-false>; *see also* Devlin Barrett, *Informant Charged with Lies About Bidens Also Claimed Russian Contacts, Feds Say*, THE WASHINGTON POST (Feb. 20, 2024), available at [www.washingtonpost.com/national-security/2024/02/20/hunter-biden-smirnov-lying-indictment-lowell/](http://www.washingtonpost.com/national-security/2024/02/20/hunter-biden-smirnov-lying-indictment-lowell/).

While responsible news outlets reported this explosive development, *see, e.g.*, Ryan J. Reilly and Rebecca Kaplan, *A now-indicted FBI informant was at the ‘heart’ of the GOP’s case against Joe Biden*, NBC News (Feb. 16, 2024), available at <https://www.nbcnews.com/politics/joe-biden/now-indicted-fbi-informant-was-heart-gops-case-joe-biden-rcna139200>; Alexander Mallin, Rachel Scott, Katherine Faulders, Lauren Peller, Lucien Bruggeman, and Mike Levine, *FBI source charged for allegedly providing false info on Bidens, which was cited by Republicans*, ABC News (Feb. 15, 2024), available at <https://abcnews.go.com/Politics/special-counsel-charges-fbi-confidential-source-alexander-smirnov/story?id=107275129>, FOX initially remained silent,<sup>1</sup> despite the fact that this now rendered the prior reporting on these allegations highly misleading.

Then, in a brazen show of no remorse, rather than walk back the story and correct the record, FOX double-downed on the debunked bribery allegation and used Smirnov’s indictment to claim this is an “intimidation tactic” aimed at silencing “whistleblowers,” to blame the FBI for its credulity, and to suggest an even deeper conspiracy. *See* Michael M. Grynbaum and Ken Bensinger, *A Biden Accuser Was Discredited. Right-Wing Media Is Undeterred.*, THE N.Y. TIMES (February 23, 2024), available at <https://www.nytimes.com/2024/02/23/business/media/right-wing-media-alexander-smirnov.html>.

On March 19, 2024, Lev Parnas, a former Giuliani associate, testified before the House Oversight Committee in the course of the impeachment inquiry of President Joe Biden. Mr. Parnas explained that beginning in November 2018, he was tasked by “Rudy Giuliani, on behalf of then-president Donald Trump, . . . with a mission to travel the globe finding dirt on the Bidens so that an array of networks could spread misinformation about them.” Written Statement of Lev Parnas,

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<sup>1</sup> FOX’s silence on this issue did not go unnoticed. *See, e.g.*, Matt Stieb, *Fox News Silent on Bogus Hunter Biden Witness It Hyped Constantly*, INTELLIGENCER (Feb. 16, 2024), available at <https://nymag.com/intelligencer/article/fox-news-silent-on-bogus-hunter-biden-witness-it-hyped.html>.

March 19, 2024, available at <https://oversight.house.gov/wp-content/uploads/2024/03/Parnas-Lev-Written-Statement.pdf>, at 1. After spending “nearly a year of traveling across the globe to find damaging information on the Bidens. . . [including] trips to Ukraine, Poland, Spain, Vienna, London, and other locations,” Mr. Parnas “found precisely zero proof of the Bidens’ criminality. Instead, what [he] learned in that timeframe was the true nature of the conspiracy that the Kremlin was forcing through Russian, Ukrainian, American, and other channels to interfere in our elections.” *Id.* at 4-5. Critically, Mr. Parnas outlined the conspiracy formed in early 2019 between and among Giuliani and a group of political and media professionals known as the “BLT Team” to spread known misinformation and a false narrative about the Bidens’ corruption, which they *knew* to be baseless, in order to manipulate the public. *Id.* at 5. Mr. Parnas specified that “John Solomon [an investigative reporter for The Hill with contacts at FOX News], Sean Hannity, and media personnel, particularly at FOX News, . . . used that narrative to manipulate the public ahead of the 2020 election. They are still doing this today, as we approach the 2024 election.” *Id.*

Mr. Biden reserves all of his rights and remedies to pursue claims against FOX and its joint tortfeasors arising from this conspiracy. In the interim, given that the bribery allegations have been confirmed to be false, **we hereby demand that FOX take immediate steps to update its readers and viewers that the source of these allegations has been federally indicted for fabricating the allegations.** This would necessarily include updating all digital articles discussing the bribery allegations with editor’s notes informing readers of the indictment, and instructing FOX television hosts, including but not limited to Sean Hannity, Jesse Watters, and Maria Bartiromo, to inform their viewers on air that they have been sharing a debunked allegation from a source who has been federally indicted.

#### ***Unlawful Commercial Exploitation of Mr. Biden’s Image, Name, and Likeness***

While routinely defaming and disparaging Mr. Biden, FOX has simultaneously sought to profit by the unlawful exploitation of Mr. Biden’s image, name, and likeness for commercial purposes and reprehensible dissemination of salacious photographs depicting Mr. Biden.

The right of publicity is the inherent right of every human being to control the commercial use of his or her identity. The right is defined in Black’s Law Dictionary as “the right of [an] individual, especially [a] public figure or celebrity, to control [the] commercial value and exploitation of his name or picture or likeness or to prevent others from unfairly appropriating that value for their [own] commercial benefit.”

Virtually all states in the United States recognize an ascertainable interest in the publicity associated with one’s name, photograph, and likeness. New York has codified the right of publicity as part of its Right of Privacy statute at Article 5 of the New York Civil Rights Law, thereby providing protection for a person’s name, portrait, picture, and voice. Specifically, section 50 of the New York Civil Rights Law provides:

A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

N.Y. Civil Rights Law, § 50.<sup>2</sup>

Section 51 further provides:

Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages.

N.Y. Civil Rights Law, § 51.

In order for a plaintiff to make out a claim under sections 50 and 51 of the Civil Rights statute, a plaintiff must establish that the defendant (1) used plaintiff's name, portrait, picture, or voice; (2) within the state of New York; (3) for the purposes of advertising or trade; and (4) without the plaintiff's written consent. *Molina v. Phoenix Sound Inc.*, 297 A.D.2d 595, 597 (1st Dep't 2002). Although the law provides exceptions for newsworthy matters and matters of public interest, the law does not provide protection where the primary purpose for using the celebrity image is a *knowingly fictitious work*. See *Yousoupoff v. Columbia Broad. Sys., Inc.*, 19 A.D.2d 865, 865-66 (1st Dep't 1963) (Steuer, J., concurring) ("The immunity granted in respect to informative matter does not extend to dramatized or fictionalized versions of the event reported."); see, e.g., *Sutton v. Hearst Corp.*, 277 A.D. 155, 157 (1st Dep't 1950) (complaint stated cause of action for invasion of plaintiff's privacy for advertising purposes or for purposes of trade because the story was so embellished as to be fictionalized and its primary purpose was to amuse and astonish the reading public for "purposes of trade," not for the legitimate purpose of disseminating news).

Here, without Mr. Biden's consent,<sup>3</sup> Fox Nation<sup>4</sup> produced and aired an entirely fictional six-part "mock trial" entitled "The Trial of Hunter Biden", which first aired on October 21, 2022. The miniseries is described as "a riveting look at the unresolved legal situation of President Joe Biden's son, Hunter. The mock trial features prosecuting attorney Doug Burns<sup>5</sup> and defense

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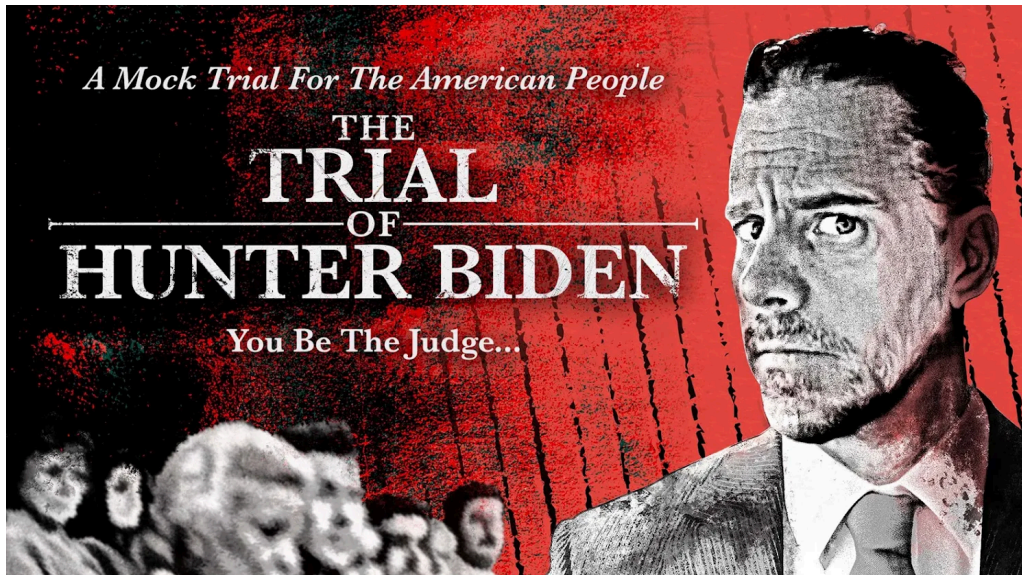
<sup>2</sup> In fact, it is a misdemeanor when a firm or corporation "uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person." N.Y. Civil Rights Law, § 50.

<sup>3</sup> As acknowledged in the miniseries, "Mr. Hunter Biden has not authorized this exercise, he is not participating in this trial in any fashion, and has had no involvement in the preparations."

<sup>4</sup> According to its website, "FOX Nation is an *entertainment* streaming service brought to you by FOX News." See <https://help.fox.com/s/article/Getting-Started-with-FOX-Nation#>: (emphasis added).

<sup>5</sup> Doug Burns is a former prosecutor who is now in private practice. According to his LinkedIn profile, since 2003, he has appeared more than 800 times on the Fox News Channel, as well as other programs including the Fox Business Network and Fox 5. He is not involved in prosecuting the criminal case against Mr. Biden, and is represented for his media appearances by Lois Katz Public Relations. See [https://www.linkedin.com/in/doug-burns-9956bb13?original\\_](https://www.linkedin.com/in/doug-burns-9956bb13?original_).

attorney Randy Zelin<sup>6</sup>.” See <https://nation.foxnews.com/the-trial-of-hunter-biden-nation/>. As FOX has explained, the mock trial captures “how a possible Hunter Biden trial *might* look.” Fox and Friends, *Fox Nation gives inside look into Hunter Biden mock trial*, FOX NEWS (Oct. 19, 2022), available at <https://www.foxnews.com/video/6313999559112> (emphasis added).



As of the date of this letter, “The Trial of Hunter Biden” has been widely advertised and is available for streaming on Fox Nation, as well as other streaming services including DirecTV, Apple TV, Roku Channel, and YouTube TV.<sup>7</sup>

Far from reporting on a newsworthy event, FOX has sought to “commercializ[e Mr. Biden’s] personality through a form of treatment distinct from the dissemination of news or information.” *Gautier v. Pro-Football, Inc.*, 304 N.Y. 354, 359 (1952). Indeed, the entire miniseries is fictionalized and based on a nonexistent criminal case. The two charges which are the subject of the mock trial are (1) whether Mr. Biden violated the Foreign Agents Registration

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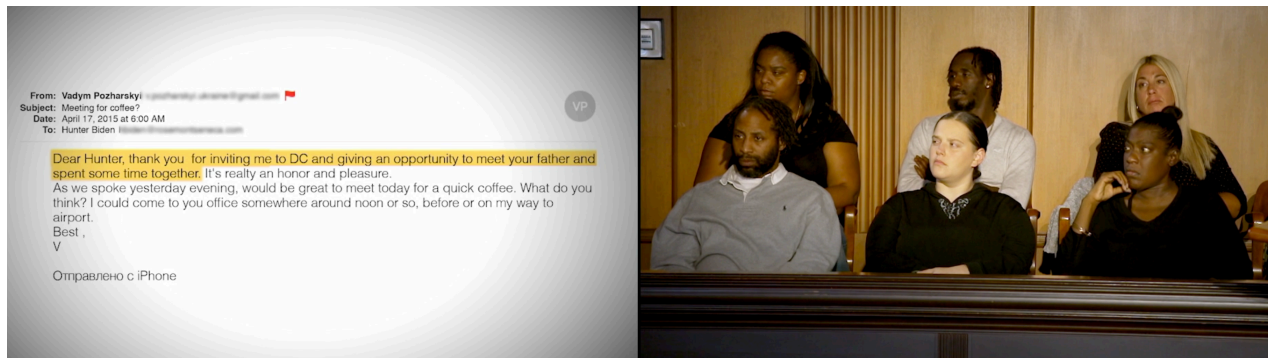
<sup>6</sup> Randy Zelin is also a former prosecutor who is now in private practice and who is an adjunct law professor at Cornell Law School. Mr. Zelin is a legal analyst for FOX News and FOX Business, among other networks. See <https://www.linkedin.com/in/randy-zelin-34a94012>. Mr. Zelin is not involved in any way in defending Mr. Biden in his criminal case. In fact, Zelin represented Charles Gucciardo, a NY lawyer who paid “Rudy Giuliani \$500,000 on behalf of a company co-founded by a Ukrainian-American businessman who helped Giuliani investigate Trump’s political rival Joe Biden.” Karen Freifeld, *New York lawyer is source of \$500,000 paid to Trump attorney Giuliani*, REUTERS (Nov. 7, 2019), available at [https://www.reuters.com/article/idUSKBN1XH29K/#:~:text=NEW%20YORK%20\(Reuters\)%20%2D%20A,lawyer%20told%20Reuters%20on%20Thursday.](https://www.reuters.com/article/idUSKBN1XH29K/#:~:text=NEW%20YORK%20(Reuters)%20%2D%20A,lawyer%20told%20Reuters%20on%20Thursday.)

<sup>7</sup> Where a defendant’s infringement of a plaintiff’s right of privacy/publicity is continuing, each separate act gives rise to a separate cause of action for purposes of the statute of limitations. See *Lehman v. Discovery Commc’ns, Inc.*, 332 F. Supp. 2d 534, 539 (E.D.N.Y. 2004) (“Like a publication of the same defamatory statement in both a morning and evening editions of a newspaper, a rebroadcast of a television show is intended to reach a new audience and is therefore an additional communication. A rebroadcast has renewed impact with each viewing and creates a new opportunity for injury, thereby justifying a new cause of action.”).

Act (“FARA”), and (2) whether he committed bribery—neither of which Mr. Biden has been charged with. As Judge Joe Brown, a longtime TV judge and the “presiding judge” in the miniseries, states at the outset of the program: “This is a mock trial. It is not a real proceeding. To be clear, Hunter Biden has not been implicated in or charged in any crimes arising from his activities, alleged activities. Of course, this is not a real trial. It is a mock trial.” In other words, the miniseries is fictionalized; it is not a news event. It was made for the purpose of trade and advertising<sup>8</sup>, and merely exploits Mr. Biden’s name, image, and likeness for FOX’s commercial benefit. Thus, FOX is not protected by the newsworthiness exception to the right of privacy/publicity statutes.

As the New York Court of Appeals has explained, a work “may be so infected with fiction, dramatization or embellishment that it cannot be said to fulfill the purpose of the newsworthiness exception.” *Messenger ex rel. Messenger v. Gruner + Jahr Printing & Pub.*, 94 N.Y.2d 436, 446 (2000). The fact that a given film or program revolves around a “true occurrence,” *id.* at 445, does not invoke the newsworthiness exception where the entire account remains “mainly a product of the imagination,” *Binns v. Vitagraph Co. of Am.*, 210 N.Y. 51, 56 (1913).

Here, notwithstanding the fictional premise of the series—which is intended solely as entertainment and not as news—the so-called “evidence” which is presented during the mock trial includes actual emails sent to and from Mr. Biden as well as actual photographs of him (including nonconsensual intimate images discussed below). Additionally, the mock trial features individuals acting as themselves as witnesses testifying on behalf of the prosecution including John Paul Mac Isaac—the Delaware shop owner who obtained a laptop which he claims Mr. Biden dropped off at his repair shop—and Miranda Devine, a New York Post columnist and Fox News contributor who authored the book *Laptop from Hell: Hunter Biden, Big Tech, and the Dirty Secrets the President Tried to Hide*.



<sup>8</sup> “Courts have liberally construed the statutory term “for advertising purposes” to include “solicitation for patronage of a particular product or service.” *Beverley v. Choices Women's Med. Ctr., Inc.*, 78 N.Y.2d 745, 751, 587 N.E.2d 275, 278 (1991).



While using certain true information, the series intentionally manipulates the facts, distorts the truth, narrates happenings out of context, and invents dialogue intended to entertain. Thus, the viewer of the series cannot decipher what is fact and what is fiction, which is highly damaging to Mr. Biden.

The Court of Appeal's decision in *Spahn v. Julian Messner, Inc.*, 21 N.Y.2d 124, 233 N.E.2d 840 (1967), is instructive. There, a prominent baseball player (public figure) sued the author and publisher for invasion of his right of privacy under sections 50 and 51 of the Civil Rights Law based on an unauthorized, fictionalized biography of his life intended for children to read. Given the intentional invention of incidents and dialogues, as well as thoughts and feelings, and the knowing manipulation of facts about the plaintiff, the Court held that the judgment of damages and an injunction preventing the further publication and distribution of the book were properly awarded against the author and the publisher. The Court explained that to allow "the defendants to publish the kind of knowing fictionalization presented here would amount to granting a literary license which is not only unnecessary to the protection of free speech but destructive of an individual's right -- albeit a limited one in the case of a public figure -- to be free of the commercial exploitation of his name and personality." *Id.* at 129.

Like in *Spahn*, "The Trial of Hunter Biden" contains "all-pervasive distortions, inaccuracies, invented dialogue, and the narration of happenings out of context." *Id.* at 127. Thus, FOX's knowing production and airing of "The Trial of Hunter Biden" is a blatant violation of Mr. Biden's rights, for which he is entitled to damages and injunctive relief.

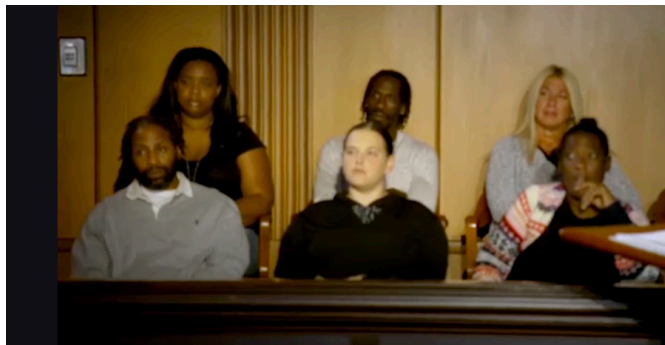
Given the foregoing, **we hereby demand that FOX (i) immediately remove "The Trial of Hunter Biden" from any and all streaming platforms including Fox Nation, and (ii) advise any and all third-party streaming services that they must immediately remove "The Trial of Hunter Biden" from their respective streaming services.**

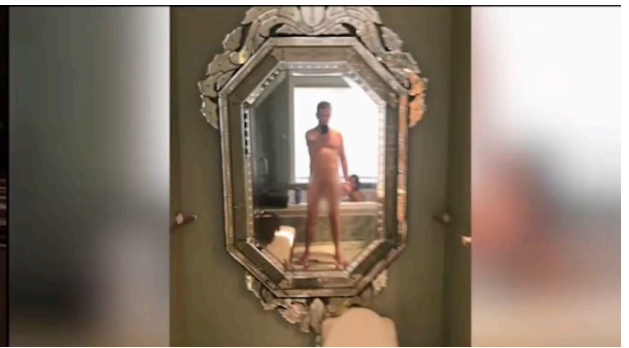
FOX's failure to expeditiously comply with the removal demands will subject FOX to significant liability for its continued and blatant invasion of Mr. Biden's rights. However, Mr. Biden's removal demand is not a waiver of, or prejudice to, any of his rights, remedies, or claims at law or in equity arising from FOX's unlawful commercial exploitation of his image, name, and likeness.



***Unlawful Publication of Stolen Intimate Images***

In addition to the unlawful commercial exploitation of Mr. Biden’s image, name, and likeness, “The Trial of Hunter Biden” also unlawfully published and continues to publish intimate images of Mr. Biden depicting him in the nude as well as engaged in sex acts in violation of the majority of states’ laws against the nonconsensual disclosure of sexually explicit images and videos, sometimes referred to as “revenge porn” laws.





FOX knows that these private and confidential images were hacked, stolen, and/or manipulated digital material<sup>9</sup> which were intended to remain private and confidential and which were unlawfully procured and published without Mr. Biden's consent. *See, e.g.,* Jamie Joseph, *Hunter Biden sues former WH aide for altering, publishing 'pornographic' photos from laptop he denies is his*, FOX NEWS (Sept. 14, 2023), available at <https://www.foxnews.com/politics/hunter-biden-sues-former-trump-aide-over-spreading-infamous-laptop-photos-recordings>. *See also* Craig Timberg, Matt Viser, and Tom Hamburger, *Here's how The Post analyzed Hunter Biden's laptop*, THE WASHINGTON POST (Mar. 30, 2022), available at <https://www.washingtonpost.com/technology/2022/03/30/hunter-biden-laptop-data-examined/> (the vast majority of the data on a portable hard drive purporting to contain data from Mr. Biden's MacBook Pro could not be verified by either of the two security experts who examined the data; the experts found that after the first New York Post stories on the laptop appeared in October 2020, someone who was not Mr. Biden accessed the drive from a West Coast location and created three additional folders on the drive, including one entitled "Salacious Pics Package").

By unlawfully publishing images of Mr. Biden depicting an unclothed or exposed intimate part of him and depicting him engaging in sexual conduct in order to harass, annoy, and alarm him, FOX has violated N.Y. Civil Rights section 52-b and Mr. Biden is entitled to not only compensatory and punitive damages and his attorney's fees, but he is also entitled to injunctive relief, as demanded herein. N.Y. Civ. Rights Law § 52-b(2). It is worth noting that when these same images were posted on Twitter (now X) as part of an organized effort by exiled Chinese billionaire Guo Wengui and his followers, Twitter promptly had these images removed as violative of its revenge porn policies and other terms of service. *See, e.g.,* Ryan Bort, *Republicans Are Furious Twitter Took Down Pics of Hunter Biden's Penis*, Rolling Stone (Feb. 8, 2023), available at <https://www.rollingstone.com/politics/politics-news/republicans-twitter-took-down-hunter-biden-dick-pics-1234675974/>.

The unlawful publication of these intimate images cannot be said to have been made for a legitimate public purpose, where the miniseries featuring a mock trial is not accurately reporting on newsworthy events but rather, is a fictionalized trial of a nonexistent case against Mr. Biden. *See, e.g.,* Nathan Place, *Fox News accused of 'revenge porn' after airing explicit photos of Hunter Biden*, THE INDEPENDENT (Apr. 9, 2021), available at <https://www.the-independent.com/news/world/americas/us-politics/fox-news-hunter-biden-hannity-b1829404.html> ("Critics have questioned the news value of such images, given that Mr. Biden has been open about his past drug addictions and is not a member of his father's administration.").

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<sup>9</sup> As you are undoubtedly aware, the hacked, stolen, and/or manipulated digital material is the subject of several lawsuits filed by Mr. Biden including (i) a lawsuit filed on September 12, 2023 against Garrett Ziegler and his entity for the violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the California Computer Data Access and Fraud Act (Cal. Pen. Code § 502), and related claims, pending in the U.S. District Court for the Central District of California, case number 2:23-cv-07593; (ii) a lawsuit filed on September 26, 2023 against Rudy Giuliani, his attorney, and others for the violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030), the California Computer Data Access and Fraud Act (Cal. Pen. Code § 502), and related claims, pending in the U.S. District Court for the Central District of California, case number 2:23-cv-8032; (iii) counterclaims filed on March 17, 2023 against John Paul Mac Isaac for invasion of privacy and related claims, pending in the U.S. District Court for the District of Delaware, case number 1:23-cv-00247-MN.

As for the selfies taken by Mr. Biden himself, he additionally has federal copyright infringement claims against FOX, since Fox Nation’s unlawful publication of these photographs infringes on Mr. Biden’s exclusive copyright to reproduce and display his work. *See Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (“The Copyright Act of 1976 provides that copyright ownership ‘vests initially in the author or authors of the work.’”) (quoting 17 U.S.C. § 201(a)); *see generally* Film and Multimedia and the Law § 9:14 (“the author of the famous ‘Ellen Oscar Selfie’—featuring Ellen DeGeneres, Meryl Streep, Julia Roberts, Bradley Cooper, Jennifer Lawrence, among other A listers—is not Ellen (the camera’s owner), but Bradley Cooper, who snapped the famous picture.”); *see, e.g., Conradis v. Buonocore*, No. 6:18-CV-1486-EJK, 2021 WL 4243720, at \*4 (M.D. Fla. Sept. 17, 2021).

### ***DMCA Takedown Notice***

This letter will serve as official notification of copyright infringement pursuant to the Digital Millennium Copyright Act (“DMCA”) 17 U.S.C. § 512(c) (3) for materials featured on “The Trial of Hunter Biden,” available on <https://nation.foxnews.com/the-trial-of-hunter-biden-nation/>.

Mr. Biden is the exclusive rights holder of the copyrighted material identified above including but not limited to the intimate images depicted above that have been published without authorization on Fox Nation’s “The Trial of Hunter Biden.” We hereby demand that FOX expeditiously remove and disable access to any and all intimate images of Mr. Biden from “The Trial of Hunter Biden” including but not limited to the images depicted above as being the subject of infringement.

FOX’s failure to expeditiously comply with the foregoing removal demands will subject FOX to significant liability for its continued and blatant copyright infringement. However, Mr. Biden’s removal demands are not a waiver of, or prejudice to, any of his rights, remedies, or claims at law or in equity arising from FOX’s copyright infringement.

### ***Preservation Demand<sup>10</sup>***

As we anticipate that litigation against FOX, as well as its joint tortfeasors is imminent, we hereby formally demand that FOX and its predecessors, successors, parents, subsidiaries, divisions, affiliates, employees, hosts, anchors, commentators, columnists, reporters, journalists, officers, directors, partners, attorneys, accountants, and agents, including but not limited to Jesse Watters, Sean Hannity, Jeanine Pirro, Dana Perino, Miranda Devine, Laura Ingraham, and Maria Bartiromo, preserve all documents potentially relevant to the allegations in this letter including any documents which relate to the allegations in this letter in the broadest sense dating back to at least January 1, 2019. To be clear, such documents include but are not limited to all communications related to (i) strategy meetings at BLT Steak in Washington, D.C. and/or “BLT Team” meetings or communications; (ii) Skype interviews between Ukrainian officials and a Congressman Devin Nunes senior staff member; (iii) the meeting in a FOX News conference room

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<sup>10</sup> As FOX has been on notice regarding anticipated litigation by Hunter Biden since at least February 1, 2023, pursuant to a preservation demand sent by Bryan Sullivan, Esq., there should not have been *any* destruction of potentially relevant evidence relating to him. Although we are formalizing our demand here in an abundance of caution, we are not waiving any rights with respect to any documents which may have been destroyed.

in New York City on October 8, 2019 between and among Lev Parnas, Rudy Giuliani, John Solomon, Joseph diGenova, and/or Victoria Toensing; (iv) the procurement, use, and publication of images of Mr. Biden including the use of intimate images purporting to depict him; (v) the “Salacious Pics Package” and/or “Salacious Pics Package\_EDITED” folder allegedly on the laptop obtained by Mr. Mac Isaac; (vi) the planned interview of former Ukrainian prosecutor Viktor Shokin by Sean Hannity in Vienna, Austria in or around late October 2023; and (vii) Fox Nation’s six-part “mock trial” entitled “The Trial of Hunter Biden; (viii) the indictment returned against Alexander Smirnov on or about February 14, 2024.

This preservation demand includes internal communications regarding the foregoing subjects between and among FOX employees, hosts, anchors, commentators, columnists, reporters, journalists, officers, directors, partners, attorneys, accountants, and agents, as well as FOX’s communications with third parties including but not limited to John Paul Mac Isaac, Colonel Steve Mac Isaac, Rudy Giuliani, Robert Costello, Guo Wengui (and/or Ho Wan Kowk and/or Miles Guo), GTV, Vish Burra, Jack Maxey, Vincent Kaufman, John Solomon, Steve Bannon, Tim Murtaugh, and Igor Fruman, Lev Parnas, Dmitry Firtash, then-Congressman Devin Nunes, Senator Ron Johnson, Joseph diGenova, Victoria Toensing, Derek J. Harvey, then U.S. Attorney General William Barr, and other U.S. Department of Justice officials.

The duty to preserve evidence is broad and extends to all documents, regardless of whether same is stored electronically (such as emails or documents stored on a server or the cloud) or in hard-copy and regardless of the type of document. For example, correspondence, memoranda, emails, communications, draft articles, reports, spreadsheets, notes, photographs, videotapes, and other electronically stored information (“ESI”) are all considered documents that must be preserved.

To ensure that all potentially relevant evidence is preserved, you should communicate directly with all employees, agents, and staff who have possession or control of potentially relevant documents, including but not limited to personnel who deal with email retention, deletion, and archiving. You should advise each of these employees, agents, or staff to preserve any relevant documents within their custody or control. Furthermore, you should advise all such persons that any regularly scheduled and/or automatic deletion of email or other ESI, or other manners of document destruction such as shredding, must be discontinued immediately with respect to any potentially relevant data. Because ESI in particular can be easily deleted, modified, or corrupted, you must take every reasonable step to preserve this information until the resolution of this matter.

Please confirm by 5:00 p.m. on **Friday, April 26, 2024** that you have taken the steps outlined in this letter to ensure that FOX preserves evidence including ESI and tangible documents potentially relevant to the anticipated litigation. If you have not undertaken the steps outlined above, or have taken other actions, please describe what you have done to ensure that FOX will preserve potentially relevant evidence. If you have any questions about the scope of this demand, please ask. Should FOX’s failure to preserve potentially relevant evidence result in the corruption, loss, or delay in production of evidence to which we are entitled, such failure would constitute spoliation of evidence, and we will not hesitate to seek sanctions.

Mr. Gugar and Ms. West  
April 23, 2024  
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LAWYERS

This letter does not constitute a complete recitation of all the facts and circumstances related to this matter. It is not a waiver of, or prejudice to, any of our client's rights, remedies or claims at law or in equity. They are all expressly reserved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tina Glandian', with a long horizontal flourish extending to the right.

Tina Glandian  
GERAGOS & GERAGOS

cc: Mark Geragos, Esq.  
Bryan Freedman, Esq.