

information, including the Company’s filings with the SEC and press releases and media reports; and (ii) sworn testimony, evidentiary documents, and other information disclosed in connection with pending litigations against FOX, including court filings in *US Dominion, Inc. v. Fox News Network, LLC*, Case No. N21C-03-257 EMD, (Del. Super.) (the “Dominion Lawsuit”) and *Smartmatic USA Corp. v. Fox Corp.*, Index No. 151136/2021 (N.Y. Sup., N.Y. County) (the “Smartmatic Lawsuit”).

NATURE OF THE ACTION

1. This derivative action arises from fiduciary breaches where the board of directors of overseeing a 24-hour news channel knowingly allowed the news channel to broadcast, promote, and perpetuate a false election fraud story in connection with the 2020 U.S. Presidential election in order to maintain the network’s ratings and viewers, who were known to be supporters of Donald Trump.

2. Through its wholly owned subsidiary, Fox News Network, LLC (“Fox News”), FOX knowingly allowed Fox News employees, TV personalities, and invited guests to publicly air false claims of election fraud, which included false statements that two voting machine companies, Dominion Voting Systems, Inc. (“Dominion”) and Smartmatic USA Corp (“Smartmatic”), manipulated the vote count and rigged the 2020 Presidential election in favor of Joe Biden.

3. Even at the cost of misleading viewers, FOX executives and the Board knew Fox News anchors made false statements to the public. FOX knew that its viewers expected FOX to show support for President Trump, so to satisfy its viewers, certain Fox News anchors blamed Dominion and Smartmatic for President Trump's loss by claiming that the election was rigged.

4. FOX allowed the false claims to air because it was fearful of losing viewers if it reported the truth about the election – that President Trump lost. Indeed, the conspiracy-style stories of a stolen election were ramped up after Fox News suffered viewer backlash by being the first major TV-news network to call the vote in Arizona in favor of Joe Biden to secure his Electoral college victory, which upset a portion of the conservative viewer base, and was attributed to falling ratings and viewers switching to a competing conservative-leaning network, Newsmax.¹

5. Court filings in the Dominion Lawsuit reveal that FOX executives and hosts knew that Trump's election fraud claims were "really crazy stuff," as Rupert Murdoch, the head of the FOX media empire, put it, yet pushed them on air anyway.²

¹ See Peter Baker, *Inside the Panic at Fox News After the 2020 Election*, NY TIMES (Mar. 4, 2023), available at https://www.nytimes.com/2023/03/04/us/politics/panic-fox-news-2020-election.html?action=click&pgtype=Article&state=default&module=styln-fox-news&variant=show®ion=MAIN_CONTENT_1&block=storyline_top_links_recirc.

² *Id.*

FOX knew – from the Board on down – that Fox News was reporting false and dangerous misinformation about the 2020 Presidential election, but FOX was more concerned about short-term ratings and market share than the long-term damages of its failure to tell the truth.

6. The Board’s decision to chase viewers by promoting the false stolen election claims has exposed the Company to public ridicule and negatively impacted the credibility of Fox News as a media organization that is supposed to accurately report newsworthy events. The Company is now the subject of two defamation cases, with combined damages claimed to exceed \$4 billion.

7. Moreover, as acknowledged by certain members of Congress, FOX’s spreading of election fraud conspiracy theories is directly linked to the January 6, 2021 violent attack on the United States Capitol by Trump supporters, which resulted in serious injuries and even death among Capitol police and \$1.5 million in damages to the Capitol building and grounds.³

³ See letter from Bill Pascrell, Jr. to Speaker of the House Kevin McCarthy, dated Mar. 7, 2023, available at <https://www.insidernj.com/press-release/pascrell-calls-on-mccarthy-to-stop-requiring-that-publicly-displayed-televisions-broadcast-discredited-fox-news-to-capitol-visitors/>; and *Senator Murray Calls Out Tucker Carlson and Fox News for Spreading Lies About 2020 Election and January 6th Insurrection* (Mar. 16, 2023), available at <https://www.murray.senate.gov/senator-murray-calls-out-tucker-carlson-and-fox-news-for-spreading-lies-about-2020-election-and-january-6th-insurrection/>; see also *One Year Since the Jan. 6 Attack on the Capitol*, U.S. DEPT. OF JUSTICE, available at <https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol>.

8. The Board's failures caused and/or allowed the Company to sell a fictitious story of election fraud for the sole purpose of serving its own business purposes, in disregard for the truth, the Board's fiduciary obligations and the Company's best interests.

9. The members of the Board breached their fiduciary duties by: (i) failing to implement and enforce a system of effective internal controls and procedures; (ii) consciously ignoring numerous red flags from reputable sources that Fox News' election fraud reporting was entirely false; (iii) failing to exercise their oversight duties to ensure the Company complied with its internal policies and standards to (a) avoid risk to FOX's reputation and integrity, and (b) uphold FOX's foremost principles of accuracy of information, clarity of opinion and quality of its content; and (iv) consciously disregarding and failing to ensure that FOX's and Fox News' public statements were proper and accurate.

10. This suit seeks to remedy Defendants' breaches of their fiduciary duty that has caused, and will cause, substantial injury to the Company.

JURISDICTION

11. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341 and over FOX pursuant to 10 *Del. C.* § 3111.

12. As directors and officers of a Delaware corporation, the Defendants have consented to the jurisdiction of this Court pursuant to 10 *Del. C.* § 3114.

13. In addition, Article XI of FOX’s Amended Bylaws, dated February 13, 2023, includes a forum selection clause that states in relevant part:

Unless the Corporation consents in writing to the selection of or otherwise elects an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action arising pursuant to any provision of the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine.⁴

THE PARTIES

14. Plaintiff is a current stockholder of FOX and has continuously been a stockholder of the Company at all times relevant herein.

15. Nominal defendant FOX is a Delaware corporation headquartered in New York City. FOX is a news, sports, and entertainment company that produces and distributes content through brands such as FOX News Network, LLC (“Fox News”), Fox Sports, Fox Network, and Fox Television Stations. FOX became a standalone publicly traded company on March 19, 2019, when it was spun off from

⁴ FOX Corporation Amended and Restated Bylaws, filed with the SEC on Feb. 13, 2023, *available at* <https://www.sec.gov/Archives/edgar/data/1754301/000119312523036119/d429047dex31.htm>.

Twenty-First Century Fox, Inc. (“21CF”) in connection with a transaction in which The Walt Disney Corporation acquired all the assets of 21CF, other than domestic media assets in live news, sports and entertainment programming. Fox News is a wholly owned subsidiary of FOX and was also formed and is organized under the laws of Delaware and has its principal place of business in New York. According to the Company’s public most recent annual report, for over 20 consecutive years, FOX News has been the top-rated national cable news channel in both week-day primetime and total day viewing, according to The Nielsen Company.⁵ FOX News also finished calendar year 2021 as the number one cable network in week-day primetime and total day viewing among total viewers for the sixth consecutive year.⁶ The Company’s Class A and Class B common stock are traded on the NASDAQ under the symbols “FOX A” and “FOX,” respectively. Holders of Class B Common Stock are entitled to one vote per share on all matters on which stockholders have the right to vote, including director elections. Holders of Class A Common Stock are entitled to vote only in the limited circumstances set forth in the Company’s Amended and Restated Certificate of Incorporation.⁷

⁵ FOX Annual Report on Form 10-K, filed with the SEC on Aug. 12, 2022, at 5, *available at* <https://www.sec.gov/ix?doc=/Archives/edgar/data/1754301/000162828022022584/fox-20220630.htm> (“2022 Annual Report”).

⁶ *Id.*

⁷ *Id.* at 85.

16. Defendant K. Rupert Murdoch (“Rupert”)⁸ has led FOX, its predecessor entities and affiliates for 70 years as part of his global media empire.⁹ Rupert evolved the Company from a single family-owned Australian newspaper he took over in 1953 to the global public media and entertainment company that it is today.¹⁰ Since January 2019, Rupert has been Chair of FOX – the highest-ranking executive position at FOX – as well as member of the Board. Rupert serves as Executive Chair of Fox News, which operates Fox News Media, including Fox News and Fox Business. Prior to January 2019, Rupert served as Executive Chairman of 21CF, the Company’s former parent company from 2015 to March 2019, its CEO from 1979 to 2015 and its Chairman from 1991 to 2015. FOX’s most recent Proxy Statement describes Rupert as “the driving force behind the evolution of the Company” that created the global public media and entertainment company that was 21CF, which he most recently transformed into the focused news, sports and entertainment company that is FOX today.¹¹ Rupert has also served as the Executive

⁸ The first names of the members of the Murdoch family are used herein for ease of identification. No disrespect is intended.

⁹ FOX Annual Proxy Statement, filed with the SEC on Sept. 19, 2022, at 28, *available at* <https://www.sec.gov/Archives/edgar/data/1754301/000119312522247085/d376635ddef14a.htm> (“2022 Proxy Statement”).

¹⁰ *Id.*

¹¹ *Id.* at 6.

Chairman of News Corporation (“News Corp.”) since 2012, which is a mass media and publishing company that owns, among other things, The New York Post, Dow Jones & Company (publisher of The Wall Street Journal), and News UK (publisher of The Sun and The Times). Rupert, along with the Murdoch Family Trust, beneficially owns or may be deemed to beneficially own 42.7% of FOX Class B common stock.¹²

17. Defendant Lachlan K. Murdoch (“Lachlan”) is Rupert’s son, a director of FOX, and also Executive Chair of the Board since January 2019 and CEO of the Company since October 2018. Lachlan served as Executive Chairman of 21CF from 2015 to March 2019, its Co-Chairman from 2014 to 2015 and a director since 1996. Lachlan leads the Board in developing corporate strategies, directing the corporate agenda and overseeing the Company’s operations. Lachlan also serves as the Co-Chairman of News Corp.

18. Defendant Chase Carey (“Carey”) has been a director of the Company since March 2019 and serves as a member of the Compensation Committee. Prior to his current role at FOX, Carey worked for Rupert for over 30 years, serving in numerous director and executive roles at 21CF, including as Vice Chairman of the 21CF Board from July 2016 to March 2019, Executive Vice Chairman from July

¹² See 2022 Annual Report at 32.

2015 through June 2016, President and COO and Deputy Chairman from 2009 through June 2015, Co-COO from 1996 to 2002, a consultant from 2016 to 2018 and a director from 1996 to 2007. FOX's SEC filing in 2020 (covering the time of the misconduct alleged herein) acknowledged that Carey was not an independent director at the time.¹³

19. Defendant Roland A. Hernandez ("Hernandez") has been a director of the Company since March 2019 and serves as Chair of the Audit Committee and as a member of the Nominating and Corporate Governance Committee.

20. Defendant Jacques Nasser ("Nasser") has been a director of the Company since January 2019, having served as a director of 21CF from 2013 to March 2019. Mr. Nasser is the Lead Independent Director and serves as Chair of the Compensation Committee and a member of the Audit Committee.

21. Defendants Rupert, Lachlan, Carey, Hernandez, and Nasser are collectively referred to herein as "Defendants."

RELEVANT NON-PARTIES

22. William A. Burck ("Burck") has been a director of the Company since June 2021 and serves as a member of the Nominating and Corporate Governance Committee.

¹³ Carey was not listed as an independent director in FOX's 2019, 2020, and 2021 Proxy Statements. Carey was listed an independent as of FOX's 2022 Proxy Statement.

23. Anne Dias (“Dias”) has been a director of the Company since March 2019 and serves as a member of the Audit, Compensation and Nominating and Corporate Governance Committees.

24. Paul D. Ryan (“Ryan”) has been a director of the Company since March 2019 and serves as Chair of the Nominating and Corporate Governance Committee and a member of the Compensation Committee. Ryan was the 54th Speaker of the U.S. House of Representatives from 2015 to 2019, and he served as a Republican congressman representing Wisconsin’s 1st congressional district from 1999 to 2019.

FACTUAL ALLEGATIONS

A. FOX Knowingly Reported False Information that the 2020 Presidential Election Had Been Rigged in Favor of Biden to Maintain and Win Back Viewers

25. In the 2020 Presidential election, Democrat Joe Biden defeated incumbent president Trump, to become the 46th U.S. president. Biden garnered more than 81 million votes to win the popular vote by more than seven million ballots and to win in the Electoral College by a count of 306 to 232.

26. Refusing to acknowledge Biden’s victory, Trump claimed without evidence that the election had been stolen from him through voter fraud, and Fox News served as a willing platform for Trump’s crusade. While Fox News, a conservative media conglomerate, had always been favored by President Trump and his followers, prior to and during the election, Fox News was now losing ground as

the news outlet of choice for Trump followers because, shortly before midnight on election day, Fox News projected that President Trump had lost Arizona and was the first news outlet to call the state of Arizona for Biden, thus clinching Biden's electoral college victory.¹⁴

27. President Trump, enraged that Fox News (correctly) called Arizona for Biden, viciously attacked Fox News by, among other things, posting numerous criticisms on Twitter and calling for Trump followers to boycott Fox News and switch to other rival conservative news outlets, such as Newsmax and One America News Network.¹⁵ Trump supporters did just that, and Fox News swiftly lost a significant portion of its fan base.¹⁶

28. Just a few days later, by November 15, 2020, Fox News' average daytime audience had plummeted from 2.439 million in the days before the election,

¹⁴ Jeremy Barr, *Why these Fox News loyalists have changed the channel to Newsmax*, WASH. POST (Dec. 27, 2020), available at <https://www.washingtonpost.com/media/2020/12/27/fox-news-viewers-switch-to-newsmax/>.

¹⁵ Ted Johnson, *Donald Trump Goes Off On Fox News With Series Of Rage Retweets After Report He Wants To Set Up Streaming Rival*, DEADLINE (Nov. 12, 2020), available at <https://deadline.com/2020/11/donald-trump-fox-news-newsmax-1234613489/>.

¹⁶ Matthew Fox, *Fox Corp. tumbles 6% as Trump retweets support for rival networks Newsmax and OANN*, BUSINESS INSIDER (Nov. 14, 2020), available at <https://www.businessinsider.in/stock-market/news/fox-corp-tumbles-6-as-president-trump-retweets-support-for-rival-networks-newsmax-and-oann/articleshow/79200687.cms>.

to just above 1.6 million in the days following the election, a 34% decrease. Fox News' prime time audience fell by 37%, from 5.346 million to 3.463 million.¹⁷

29. In an effort to reclaim its favored status with President Trump and his followers, and thereby reclaim its viewers, Fox News chose to perpetuate Trump's fictitious claims of election fraud and broadcast unverified and knowingly false information to the public.

30. FOX turned to Sidney Powell ("Powell") and Rudy Giuliani ("Giuliani"), both of whom were legal counsel to Donald Trump, and who Fox News personalities Maria Bartiromo ("Bartiromo") and Lou Dobbs ("Dobbs") repeatedly hosted from November 8-16, 2020.¹⁸ Powell and Giuliani both falsely claimed the 2020 Presidential election had been stolen by vote-flipping algorithms in Dominion and Smartmatic's machines and software that had been created in Venezuela to rig elections for Hugo Chávez.¹⁹ Fox News endorsed Powell's and Giuliani's baseless

¹⁷ Fox News Channel (FNC) Nielsen Ratings, <https://ctv.kwavisi.org/networks/fox/>.

¹⁸ See Complaint against Fox News Network, ¶¶45-79, Dominion Lawsuit, (Mar. 26, 2021) ("Dominion Complaint").

¹⁹ *Id.* at ¶61.

claims of election fraud, even though White House officials stated Powell's claims were "nonsense," and she was even dismissed from President Trump's legal team.²⁰

31. On November 8, 2020, Bartiromo hosted Powell on *Sunday Morning Futures* where Powell claimed that Dominion and/or Smartmatic software had an "algorithm" used to "steal this election" from Trump. Bartiromo perpetuated the false claims and confirmed that she too had knowledge of voting irregularities, telling Powell, "I know that there were voting irregularities. Tell me about that."²¹ FOX internal documents obtained in the Dominion Lawsuit show that later that night, with respect to Bartiromo's show, Fox News personality Tucker Carlson stated: "The software shit is absurd... Half our viewers have seen the Maria clip."²²

32. On a November 12, 2020 broadcast of *Lou Dobbs Tonight* featuring Giuliani as a guest, Giuliani perpetuated the election fraud theory, falsely claiming

²⁰ *Trump assembles a ragtag crew of conspiracy-minded allies in flailing bid to reverse election loss*, WASH. POST (Dec. 21, 2020), available at https://www.washingtonpost.com/politics/trump-assembles-a-ragtag-crew-of-conspiracy-minded-allies-in-flailing-bid-to-reverse-election-loss/2020/12/21/d7674cd2-43b2-11eb-b0e4-0f182923a025_story.html.

²¹ *Sunday Morning Futures with Maria Bartiromo*, Fox News (Nov. 8, 2020), available at https://archive.org/details/FOXNEWSW_20201108_150000_Sunday_Morning_Futures_With_Maria_Bartiromo/start/2501/end/2561.

²² Dominion's Combined Opposition to Fox New Network, LLC's and Fox Corporation's Rule 56 Motions for Summary Judgment, at 18, Feb. 27, 2023, *U.S. Dominion Inc. v. Fox News Network, LLC*, Case No. N21C-11-082-EMD (Del. Super.) ("Dominion Opp.").

“Dominion is a company that’s owned by another company called Smartmatic, through an intermediary company called Indra,” which is factually untrue. Dobbs stated during the broadcast: “This looks to me like ... the endgame to a four-and-a-half yearlong effort to overthrow the president of the United States. It looks like it’s exactly that.”²³ Dobbs perpetuated the false claims of election fraud on subsequent broadcasts.

33. While Fox News perpetuated this false narrative, documents made public in the Dominion Lawsuit show that the FOX Board held in-person meetings from November 10-12, 2020, which coincided with FOX’s annual stockholders meeting on November 12, 2020.

34. Ryan testified in the Dominion Lawsuit that he and all other Board members and business unit leaders attended the meetings and did not dispute that the Board meeting included discussion of Fox News’ coverage of the 2020 election and Trump’s election conspiracy theory.²⁴ The Board also discussed the future of cable and streaming services, heard presentations about Fox Nation, a streaming service that would “Super-Serve & Expand our Loyal Audience” and “Keep [the]

²³ See Lou Dobbs (@LouDobbs), Twitter (Nov. 12, 2020, 6:03 pm), <https://twitter.com/LouDobbs/status/1327024215887851521>.

²⁴ Dominion Opp. at 22.

audience within the Fox News ecosystem,” and discussed that Trump was trying to build his own TV network that would compete with Fox News.²⁵

35. Despite the Board-level discussion and the directors’ knowledge of the falsity of the claims being publicly aired and promoted by Fox News, the bogus stolen election claims continued.²⁶

36. On November 15, 2020, Fox News broadcast an episode of *Sunday Morning Futures* hosted by Bartiromo with Giuliani and Powell as guests, which had been pre-recorded.²⁷ Again Powell and Giuliani made false claims that Dominion and Smartmatic had rigged the 2020 Presidential election by using a software algorithm and claimed Dominion and Smartmatic’s fraud had ties to a Venezuelan company that had rigged elections for Hugo Chavez.²⁸ Despite the fact that Fox News had pre-recorded the November 15 broadcast and thus knew prior to

²⁵ *Id.*

²⁶ Alexa Corse, *Voting Machine Supplier Criticized by Trump in Spotlight on Election Integrity*, WALL ST. J. (Nov. 17, 2020) (Noting that a “phalanx of federal agencies, state officials across the country overseeing elections and voting-equipment vendors said [shortly after election day] that ‘there’s no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.’”), available at https://www.wsj.com/articles/voting-machine-supplier-criticized-by-trump-in-spotlight-on-election-integrity-11605624361?mod=searchresults_pos17&page=2.

²⁷ See Dominion’s Brief in Support of its Motion for Summary Judgment on Liability of Fox News Network, LLC and Fox Corporation at 121, Ex. 98 (Bartiromo deposition testimony) (Jan. 17, 2022) (“Dominion SJ Brief”).

²⁸ *Id.*

airing that Powell and Giuliani espoused false claims of election fraud, Fox News chose to broadcast the interview with the false statements about Dominion and Smartmatic.²⁹

37. On November 17, 2020, The Wall Street Journal reported that Dominion had “come under criticism from President Trump, [and] was a linchpin in the 2020 election that federal and state officials praise as being free from tampering.” The article further reported: “A phalanx of federal agencies, state officials across the country overseeing elections and voting-equipment vendors said last week that ‘there’s no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.’”³⁰

38. The Wall Street Journal is owned by News Corp., where Rupert is the Executive Chairman and Lachlan is the Co-Chairman. Nevertheless, both Murdochs disregarded the facts in their own newspaper and did nothing to stop Fox News from reporting knowingly false “facts” in order to generate higher ratings.

39. On November 19, 2020, members of the Trump campaign’s legal team, including Giuliani and Powell, held a press conference, which Fox News aired in its

²⁹ *Id.*

³⁰ Alexa Corse, *Voting Machine Supplier Criticized by Trump in Spotlight on Election Integrity*, WALL STREET JOURNAL (Nov. 17, 2020), https://www.wsj.com/articles/voting-machine-supplier-criticized-by-trump-inspotlight-on-election-integrity-11605624361?mod=searchresults_pos17&page=2.

entirety. During the press conference, Powell and Giuliani claimed that the “rigged election” was the “massive influence of communist money through Venezuela, Cuba, and likely China in the interference with our elections here in the United States.” Powell stated that “the Dominion voting systems, the Smartmatic technology software and the software that goes in other computerized voting systems” were created at the direction of Hugo Chavez of Venezuela to ensure he never lost an election.³¹ Rupert watched the November 19 press conference and told Scott on that same day that Giuliani and Powell’s lies were “Terrible stuff damaging everybody, I fear. Probably hurting us too.” He also told News Corp.’s CEO in an email: “Watching Giuliani!,” “Really crazy stuff. And damaging.”³²

40. Also on November 19, 2020, Dobbs and Powell appeared on *Lou Dobbs Tonight* and discussed Smartmatic’s software being used to change election results.

41. On November 20, 2020, Dominion sent a retraction demand letter to Fox News wherein it detailed Fox News’ false statements about Dominion (and Smartmatic) and requested that Fox News “correct the most outlandish and false allegations it has helped perpetuate, and will also ensure that future reporting about

³¹ *Rudy Giuliani Trump Campaign Press Conference Transcript November 19: Election Fraud Claims*, Rev (Nov. 19, 2020), available at <https://www.rev.com/blog/transcripts/rudy-giuliani-trump-campaign-press-conference-transcript-november-19-election-fraud-claims>

³² Dominion Opp. at 8.

Dominion is both fair and accurate.”³³ Fox News nevertheless continued reporting false news about the 2020 Presidential election.

42. On November 21, 2020, Fox News broadcast *Justice with Judge Jeanine* hosted by Fox News personality Jeanine Pirro (“Pirro”). During that broadcast, Pirro repeated the false allegations that the system created Dominion and Smartmatic started in Venezuela with Cuban money and “is capable of flipping votes,” and she further rhetorically asked “why was there an overnight popping of the vote tabulation that cannot be explained for Biden?”³⁴ Fox News aired this show perpetuating the false narrative of election fraud despite one day earlier having received a letter from Dominion confirming the inaccuracy of Pirro’s statements.

43. On November 22, 2020, on ABC News’ *This Week*, Trump ally Chris Christie gave an interview in which he called out Powell and Giuliani and stated that “If you’ve got the evidence of fraud, present it. ... The conduct of the President’s legal team has been a national embarrassment. ... If you’re unwilling to come forward and present the evidence, it must mean the evidence doesn’t exist.”³⁵

³³ Letter from Brownstein, Hyatt Farber Schreck (Dominion’s lawyers) to Fox News, Nov. 20, 2020, Dominion Complaint, Ex. 11.

³⁴ Dominion Complaint, ¶89, Ex. 3, transcript of “Opening Statement” of *Justice with Judge Jeanine* (Nov. 21, 2020).

³⁵ Paul Kane & Felicia Sonmez, *Chris Christie Calls the Conduct of Trump’s Legal Team a ‘National Embarrassment,’* Wash. Post (Nov. 22, 2020), https://www.washingtonpost.com/politics/republicans-christie-trump-concede/2020/11/22/05c280e6-2cda-11eb-bae0-50bb17126614_story.html.

44. On November 29, 2020, after nearly one month of endorsing and promoting the election fraud lie, President Trump agreed to appear for an exclusive interview on *Sunday Morning Futures with Maria Bartiromo*. During the show, Bartiromo again perpetuated the knowingly false claims of election fraud, stating that Dominion’s alleged election fraud was “disgusting” and “corrupt[.]”³⁶

45. At the same time, on November 29 and 30, 2020, Dominion had sent “fact sheets” to more than 90 Fox News reporters, hosts and anchors, including Hannity, that included external links to independent websites disproving claims that Dominion had rigged the election.³⁷

46. The following day, on November 30, 2020, Fox News again hosted Powell on its *Hannity* program, wherein Powell repeated her false claims that the election was rigged.³⁸ Hannity perpetuated Powell’s false claims and did not notify his millions of viewers that he had seen direct evidence (received from Dominion) disproving those false claims. In fact, Hannity admitted at his deposition in the

³⁶ Dominion Complaint at ¶98.

³⁷ Dominion Opp. at 55.

³⁸ See *Hannity*, Fox News (Nov. 30, 2020), https://archive.org/details/FOXNEWSW_20201201_020000_Hannity/start/1939/episode/1999.

Dominion Lawsuit that he never believed Powell’s claims, yet he did not challenge her false claims.³⁹

47. On December 1, 2020, former U.S. Attorney General William Barr announced that the Justice Department had not uncovered evidence of widespread voter fraud and had not seen anything that would change the outcome of the election.⁴⁰

48. FOX continued reporting on the election fraud narrative during this timeframe. One media outlet reported “[i]n the two-week period after Fox News declared Joe Biden the president-elect, the network questioned the results of the election or pushed conspiracy theories about it at least 774 times.”⁴¹

49. On December 10, 2020, Smartmatic sent a letter to Fox News demanding that Fox News retract statements made in various Fox News reports and broadcasts that falsely claimed Smartmatic’s software was designed to fix elections and that Smartmatic conspired with others to defraud the American people and rig

³⁹ Dominion Opp. at 123.

⁴⁰ Dominion SJ Brief, Ex. 316.

⁴¹ Tyler Monroe, Rob Savillo & Lis Power, *Fox News has cast doubt on or pushed conspiracy theories about the election results nearly 600 times*, MEDIA MATTERS FOR AMERICA (Nov. 18, 2020), available at <https://www.mediamatters.org/fox-news/fox-news-has-cast-doubt-or-pushed-conspiracy-theories-about-election-results-nearly-600>.

the 2020 Presidential election.⁴² Smartmatic’s letter demanded a “full and complete retraction of all false and defamatory statements and reports” aired by the network.⁴³

50. The same day Smartmatic sent its letter to Fox News demanding retraction of false and defamatory statements, Powell and Dobbs appeared on *Lou Dobbs Tonight*, during which they discussed Dominion and Smartmatic’s alleged role in the election fraud.⁴⁴ During that broadcast, Powell stated: “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.”⁴⁵ Dobbs also stated: “We have tremendous evidence already, of fraud in this election.”⁴⁶ Dobbs’ or Powell’s claims of “evidence” were wholly fabricated.

B. FOX Board Members Were Aware of Fox News’ False Stolen Election Coverage and Potential Fall Out

51. Fox management and Fox News hosts were not the only ones who knew FOX was endorsing Trump’s false claims of a stolen election. Court filings from the Dominion Lawsuit include internal Fox News documents and other evidence and

⁴² Letter from Benesch (Smartmatic’s lawyers) to Fox News Network, Dec. 10, 2020, available at <https://s3.documentcloud.org/documents/20423795/legal-notice-and-retraction-demand-from-smartmatic-usa-corp-to-fox-news.pdf>.

⁴³ *Id.*

⁴⁴ See First Amended Complaint, ¶127, NYCEF Doc. No. 1199, Smartmatic Lawsuit (Mar. 6, 2023) (“Smartmatic Complaint”).

⁴⁵ Smartmatic Complaint, Ex. 39, *Lou Dobbs Tonight* (Dec. 10, 2020).

⁴⁶ *Id.*

testimony that several FOX Board members were aware Fox News was reporting false information that the 2020 Presidential election was rigged by Dominion and/or Smartmatic. While Board members Ryan and Dias took steps to put an end to the false reporting at Fox News, Rupert, Lachlan, Carey, Hernandez and Nasser appear to have failed to act despite the red flags of Fox News' improper and inaccurate reporting of false facts to perpetuate a conspiracy that the 2020 Presidential election was rigged by Dominion and/or Smartmatic. For these reasons, Defendants face a substantial likelihood of personal liability.

52. Both FOX and Fox News executives knowingly permitted the Company to perpetuate false conspiracy theories of election fraud in order to protect Fox News, which “contributes a very outsized portion of the profits of Fox Corporation and is an incredibly important part of the company.”⁴⁷

Rupert Murdoch

53. Internal FOX documents show that FOX executives, some of whom were members of the Board, were involved in managing Fox News, including through editorial input and control. Rupert and Lachlan, in particular, worked closely with Fox News management, including Fox News CEO, Suzanne Scott

⁴⁷ Dominion Opp. at 8.

(“Scott”), and Fox News executives reported to the Murdochs.⁴⁸ Rupert and Lachlan would discuss all aspects of the business with Scott.⁴⁹

54. For example, during the November 2020 to January 2021 time period, Rupert spoke with Scott several times a week to make suggestions on Fox News hosts, topics and guests, including on issues related to the 2020 Presidential election, how to cover the conspiracy claims, how to treat Donald Trump and how to handle guests, such as Giuliani.⁵⁰

55. Rupert was directly involved with Fox News’ coverage on election night, and he was “very much aware” that Trump was not happy with Fox News’ Arizona call for Biden.⁵¹

56. On November 6, 2020, Rupert sent an email to Scott about what Fox News hosts should say about false claims that Trump had won the election, stating: “Everything seems to be moving to Biden and if Trump becomes a sore loser we should watch Sean [Hannity] especially and others don’t sound the same. Not there yet but a danger.”⁵²

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 11.

⁵⁰ *Id.* at 10.

⁵¹ *Id.* at 13.

⁵² *Id.* at 15.

57. On November 8, 2020, Rupert emailed Scott to say that Fox was “getting creamed by CNN,” and that CNN was reporting that “Fox is enabling Trump’s election denialism.”⁵³

58. Later that day, Rupert, Lachlan and Scott had a long talk about viewer backlash and how to win back viewers and spoke about “the future of Fox going forward.”⁵⁴ Ultimately, they agreed to allow Fox News to report the uncorroborated claims of election fraud so as not to “abandon” their audience.⁵⁵

59. Rupert testified in the Dominion Lawsuit that he knew as early as November 9 that Bartiromo’s show the previous day aired allegations about a software computer program to switch and add votes.⁵⁶ He assumed Giuliani was pushing these claims on Fox News and conceded: “I knew that—about Rudy.”⁵⁷

60. After watching a November 19, 2020 press conference wherein Giuliani and Powell falsely claimed the election had been rigged in favor of Biden, Rupert told Scott: “Terrible stuff damaging everybody, I fear. Probably hurting [Fox News] too.”⁵⁸

⁵³ *Id.* at 19.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 149.

⁵⁷ *Id.*

⁵⁸ *Id.* at 28.

61. Rupert admitted that each of the Fox News hosts (other than Tucker Carlson) endorsed the stolen election lies.⁵⁹

62. Text messages obtained in the Dominion Lawsuit reveal that Rupert did not believe Trump's election lies and, on January 5, 2021, even floated the idea of having Fox News personalities Tucker Carlson, Sean Hannity and Laura Ingraham appear together on prime time to declare Joe Biden as the rightful winner of the election.⁶⁰

63. Rupert explained at his deposition in the Dominion Lawsuit that he did not want to antagonize Trump because “[h]e had a very large following, and they were probably mostly viewers of Fox, so it would have been stupid.”

64. Rupert confirmed that he seriously doubted claims of massive election fraud from the very beginning and admitted that he could have stopped Fox News' coverage of the election fraud lies: “I could have. But I didn't.”⁶¹

65. On January 20, 2021, the day of the inauguration of Biden, Rupert wrote in an email: “Trump insisting on the election being stolen and convincing 25 percent of Americans was a huge disservice to the country. Pretty much a crime. ...

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 33.

⁶¹ *Id.* at 150, 159.

Best we don't mention his name unless essential and certainly don't support him.”⁶²

What Rupert didn't mention was that FOX helped facilitate that stolen election “crime.”

Lachlan Murdoch

66. FOX internal documents and deposition testimony demonstrate that Lachlan was not only aware that Fox News was reporting false information that the 2020 Presidential election was rigged by voting machine and software companies, Dominion and Smartmatic, he also participated in the conspiracy.

67. From November 2020 through January 2021, Lachlan, like Rupert, was in close contact CEO Scott about Fox News' coverage of the 2020 Presidential election.⁶³

68. On election night, Lachlan monitored how Fox News handled reporting on the election, and he also discussed with Scott viewer backlash and whether to pull FOX's call of Arizona for Biden after it was made.⁶⁴

69. Lachlan admitted that he weighed in on the “specific direction on both the tone and narrative of FOX's news coverage” during November 2020 to January

⁶² Jeremy W. Peters, *Inside the 3 Months That Could Cost Fox \$1.6 Billion*, NY TIMES (Mar. 20, 2023), available at <https://www.nytimes.com/2023/03/20/technology/fox-news-dominion-texts.html>.

⁶³ *Id.* at 10.

⁶⁴ *Id.* at 12.

2021.⁶⁵ He also gave “suggestions” on hosts, narratives, topics and guests on this issue of election coverage, including how to cover conspiracy claims, and how to treat Donald Trump and Giuliani.⁶⁶

70. On November 8, 2020, Scott had a long talk with both Rupert and Lachlan to discuss mounting viewer backlash to FOX, how to win back viewers and the direction that FOX should take.⁶⁷

71. On November 9, Scott told Lachlan: “we will highlight our stars and plant flags letting the viewers know we hear them and respect them ... today is day one and it’s a process[.]”⁶⁸

72. On November 11, 2020, FOX executive Raj Shah discussed his view with Lachlan that bold, clear and decisive action was needed to regain the trust of FOX’s core audience.⁶⁹

73. On November 13, Shah again informed Lachlan that FOX was still experiencing strong viewer backlash and FOX was working to mitigate the backlash, noting that “[both] Donald Trump and Newsmax have taken active roles in

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 19.

⁶⁸ *Id.* at 21.

⁶⁹ *Id.* at 24.

promoting attacks on Fox News” and that viewer impressions of Fox News dropped precipitously after the election.⁷⁰

74. On November 14, 2020, Lachlan again offered Scott advice on Fox News’ coverage of a Donald Trump rally that “News guys have to be careful how they cover this rally. So far some of the side comments are slightly anti, and they shouldn’t be. The narrative should be this is a huge celebration of the president.”⁷¹

75. Lachlan knew at the time Fox News’ reports of election fraud were false, but he nevertheless allowed Fox News to continue reporting false information.

Paul Ryan

76. Ryan testified that he believed that the period immediately following the 2020 Presidential election was an important time, not just for FOX, but for the country and for the conservative movement itself, and shared this view as a fiduciary with Rupert and Lachlan Murdoch.⁷² Ryan knew the election conspiracy theories were baseless and that Fox should dispel those conspiracy theories.⁷³ Ryan even gave Lachlan and Rupert suggestions with respect to programming, and suggestions regarding content and show hosts.⁷⁴ Ryan also suggested to FOX senior

⁷⁰ *Id.* at 25.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 23.

⁷⁴ *Id.*

management that Fox News should present its viewers with a list of all the election fraud allegations, together with all the evidence to validate or invalidate the allegations.⁷⁵ He told the Murdochs that FOX should change gears during November 2020 through January 2021, consistently advising them to move on from Donald Trump and stop fueling election fraud.⁷⁶ And Ryan also even told fellow Board members Rupert and Lachlan “that Fox News should not be spreading conspiracy theories.”⁷⁷

77. On December 6, 2020, Ryan texted Rupert and Lachlan, telling them: “we are entering a truly bizarre phase of this where [Trump] has actually convinced himself of this farce and will do more bizarre things to delegitimize the election. I see this as a key inflection point for Fox, where the right thing and the smart business thing to do line up nicely.”⁷⁸ He called for Fox to put forth solid pushback (including editorial) of [Trump’s] baseless calls for overturning electors.

78. On January 12, 2021, Ryan told Rupert and Lachlan that Ryan believed that some “high percentage of Americans” thought the election was stolen “because they got a diet of information telling them the election was stolen from what they

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 31.

believe were credible sources.”⁷⁹ Rupert responded to Ryan’s email: “Thanks Paul. Wake-up call for Hannity, who has been privately disgusted by Trump for weeks, but was scared to lose viewers.”⁸⁰ Ryan replied: “[T]he sooner we can put down the echoes of falsehoods from our side, the faster we can get onto principled loyal opposition. I truly hope our contributors, along with Tucker, Laura, and Sean get that and execute.”⁸¹ Ryan was one of the two Board members who attempted to put an end to FOX’s reporting of false information about the 2020 Presidential election and, thus, is not named as a Defendant in this Action.

Anne Dias

79. Dias was aware Fox News was reporting false information that the 2020 Presidential election was rigged and placing the blame on Dominion and Smartmatic. Dias attended the November 10-12, 2020 FOX Board in-person meeting at which the topic of Trump spreading baseless election conspiracy theories and Trump’s stated plan to create a rival news outlet was discussed.⁸² The day the November 10-12 Board meeting ended, Dias forwarded Ryan an Axios article with

⁷⁹ *Id.* at 35.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 22.

the tagline, “Scoop: Trump eyes digital empire to wreck Fox,” noting that it was “exactly as you described it: Trump needs a scapegoat, and it’s now Fox.”⁸³

80. Like Ryan, Dias attempted to stop Fox News from reporting false facts that the 2020 Presidential election was rigged by Dominion and/or Smartmatic. On January 11, 2022, Dias told Rupert and Lachlan that “considering how important Fox News has been as a megaphone for Donald Trump directly or indirectly, I believe the time has come for Fox News or for you, Lachlan, to take a stance. It is an existential moment for the nation and for Fox News as a brand.”⁸⁴

81. When Lachlan emailed Rupert to discuss Dias’ email, Rupert responded “Just tell her we have been talking internally and [] intensely along these lines, and Fox News, which called the election correctly, is pivoting as fast as possible. We have to lead our viewers which is [] not as easy as it might seem.”⁸⁵ Ryan told Dias about his own conversation with Rupert and Lachlan, reporting he told them that this is a “huge inflection point to keep Trump down and move on for the future of the conservative movement.” He added: “Both Rupert and Lachlan fully agree. The key is to execute our collective will.”⁸⁶

⁸³ *Id.*

⁸⁴ *Id.* at 34.

⁸⁵ Dominion SJ Brief, Ex. 600 (Rupert’s Dep. Tr. 274:19-275:15).

⁸⁶ *Id.*

82. Dias was one of the two Board members who attempted to put an end to FOX's reporting of false information about the 2020 Presidential election and, thus, is not named as a Defendant in this Action.

C. FOX and Fox News' Coverage of the 2020 Presidential Election Resulted in Defamation Lawsuits Against the Company and/or Fox News

83. FOX's news coverage following the 2020 Presidential election and its false reports that Dominion and Smartmatic rigged the election in Joe Biden's favor not only harmed Fox News' credibility, it resulted in two defamation lawsuits.

84. On March 26, 2021, Dominion, Inc., Dominion Voting Systems, Inc. and Dominion Voting Systems Corp. commenced the Dominion Lawsuit in the Delaware Superior Court against Fox News asserting claims of defamation. On November 8, 2021, Dominion commenced another action asserting substantially similar claims against FOX and Fox Broadcasting Company, LLC. Those actions have been consolidated in the Delaware Superior Court. Damages in the Dominion Lawsuit are estimated to be \$1.6 billion.⁸⁷

⁸⁷ On February 5, 2021, it was reported that FOX had cancelled *Lou Dobbs Tonight* on Fox Business Network, and the show was cancelled just one day after Dobbs was named as a defendant in the Smartmatic Lawsuit. See Lisa Richwine, *Fox cancels Lou Dobbs' weekday show on Fox Business Network*, REUTERS (Feb. 5, 2021), available at <https://www.reuters.com/business/media-telecom/fox-news-cancels-lou-dobbs-weekday-business-show-2021-02-06/>.

85. On December 16, 2021, the court denied Fox News’ motion to dismiss the Dominion Lawsuit, and on June 21, 2022, the Court denied FOX’s motion to dismiss, but granted the motion with respect to Fox Broadcasting. All parties moved for summary judgment and, on March 8, 2023, those motions were fully briefed. On March 31, 2023, the court denied the summary judgment motions of FOX and Fox News and granted in part and denied in part Dominion’s summary judgment motion. The court granted Dominion’s summary judgment motion on certain elements of Dominion’s defamation claim, including that the election fraud statements were false, related to Dominion, and were published, finding Dominion had offered proof demonstrating that the statements FOX made as part of the election fraud story were substantially false, stating: “*The evidence developed in this civil proceeding demonstrates that it is **CRYSTAL** clear that none of the Statements relating to Dominion about the 2020 election are true.*”⁸⁸ The court further found that “the evidence does not support that [Fox News] conducted good-faith, disinterested reporting.”⁸⁹ The court further granted Dominion summary judgment on the element of defamation *per se*, meaning that Dominion does not need to prove damages at

⁸⁸ Dominion Lawsuit, Summary Judgment Order (Mar. 31, 2023) at 43, *available at* <https://courts.delaware.gov/Opinions/Download.aspx?id=345820> (emphasis in original).

⁸⁹ *Id.* at 72.

trial to establish liability, as injury is presumed.⁹⁰ The court denied Dominion's summary judgment motion on the issue of actual malice, finding there were genuine issues of material fact in dispute.⁹¹ A jury trial is currently scheduled to begin on April 17, 2023.

86. On February 4, 2021, Smartmatic USA Corp., Smartmatic International Holdings, B.V. and SGO Corporation Limited commenced the Smartmatic Lawsuit asserting claims of defamation against FOX, Fox News, Dobbs, Bartiromo, Pirro and Giuliani in the New York Supreme Court, New York County. Smartmatic claims damages of no less than \$2.6 billion.

87. On March 8, 2022, the court (i) granted Pirro's motion to dismiss; (ii) granted, in part, Giuliani's motion to dismiss, (iii) denied the motions of defendants FOX, Fox News, Dobbs and Bartiromo. Following cross appeals, on February 14, 2023, the New York State Appellate Court, First Department, denied Fox News' attempt to dismiss Smartmatic's defamation claims against it, along with the attempts Bartiromo, Dobbs, and Giuliani. The court also reinstated Smartmatic's claims against Pirro and reinstated certain claims against Giuliani. The appellate court also dismissed the claims against FOX because FOX was the corporate parent

⁹⁰ *Id.* at 65.

⁹¹ *Id.* at 64.

not itself charged with defamation, but granted Smartmatic leave to replead against FOX. On March 6, 2023, Smartmatic filed its amended complaint.

88. The two pending defamation litigations against FOX and Fox News have potentially exposed the Company to over \$4 billion in damages, but the Company's false reporting has caused the company additional damages: Internal FOX documents made public in the Dominion and Smartmatic Lawsuits have exposed FOX and Fox News to public ridicule and negatively impacted the credibility of Fox News as a media organization that is supposed to accurately report newsworthy events. The costs to FOX in defending the defamation cases has also been substantial. FOX's most recent SEC filings reported an 18% increase in selling, general, and administrative expenses in Q3/2022 "principally due to higher legal costs at FOX News Media."⁹²

D. FOX's Directors and Officers are Charged with Protecting the Interests of the Corporation and its Stockholders

89. Delaware law imposes the traditional fiduciary duties of care, loyalty, good faith and disclosure upon all directors and officers of a corporation and the corporation's stockholders. Except where exempted under the General Corporation Law, it is the duty and responsibility of the board of directors to manage the business

⁹² See FOX Quarterly Report for the period ended Dec. 31, 2022, filed with the SEC on Feb. 8, 2023, available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001754301/000162828023002786/fox-20221231.htm>.

of the corporation. As such, FOX's directors and officers are entrusted with management responsibility and must protect the interests of the corporation and its stockholders.

90. To facilitate execution of their duties and responsibilities, FOX codified directors' and officers' roles in committee charters, among other places. A Board charter is a policy document that defines the respective roles, responsibilities, and authorities of the Board and management.

91. By reason of their positions as officers, directors, and fiduciaries of FOX and because of their ability to control the business and corporate affairs of FOX and its subsidiaries, Defendants owed FOX and its stockholders the fiduciary obligations of care, good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage FOX in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of FOX and its stockholders so as to benefit all stockholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to FOX and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

92. To fulfill their responsibilities and duties, the directors and officers of FOX must supervise and manage FOX's policies, controls, and compliance with

applicable laws and regulations. FOX's directors are each made aware of their duties and responsibilities when, as new Board members they are required to undergo training and education on fiduciary obligations.

93. To discharge their duties, the directors and officers of FOX were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of FOX were required to, among other things:

(a) Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

(b) Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

(c) When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

94. As detailed in this Complaint, the Board and management failed in their duties and responsibilities to FOX and its stockholders.

1. Statement of Corporate Governance

95. The Board has established a Statement of Corporate Governance, which is intended to provide a framework within which the Board is to conduct its business.⁹³

96. As set forth in the Statement of Corporate Governance, directors receive operating and financial reports of the Company and have access to senior management at Board and Committee meetings.⁹⁴

2. Standards of Business Conduct

97. FOX has adopted Standards of Business Conduct (“SBC”) that applies to all directors, officers and employees of the Company.⁹⁵

98. FOX’s SBC states:

Our foremost principles are the accuracy of information, clarity of opinion and quality of our content. To ensure this, we maintain strict separation between revenue sources and our news reporting and editorial opinions.⁹⁶

99. The SBC further states:

⁹³ FOX Statement of Corporate Governance, *available at* <https://www.foxcorporation.com/corporate-governance/statement-corporate-governance/>.

⁹⁴ *Id.*

⁹⁵ FOX Standards of Business Conduct, *available at* <https://media.foxcorporation.com/wp-content/uploads/prod/2022/06/17135056/Fox-6.15.22-SOBC.pdf>.

⁹⁶ *Id.* at 3.

Avoiding Risk to Reputation: FOX's reputation and integrity are among our most valuable assets. Therefore, we are always careful to be sure that we don't do anything that would harm that reputation or that would otherwise bring FOX into disrepute.⁹⁷

3. The Board's Audit Committee is Responsible for Monitoring the Company's Risk and Compliance

100. The primary purpose of a corporate audit committee is to provide oversight of the financial reporting process, the audit process, the system of internal controls and compliance with laws and regulations.⁹⁸

101. The Audit Committee has additional responsibilities, including, among other things, to:

Review with the Company's counsel and management, including the Chief Ethics and Compliance Officer and/or the head of the corporate audit department, as applicable, the content and operation of the ethics and compliance program, as well as any legal or regulatory matter that could have a significant impact on the Company's financial statements.⁹⁹

102. The Audit Committee has the additional responsibility to:

Review and discuss the Company's policies and practices with respect to risk assessment and risk management, including cyber security, and discuss with management

⁹⁷ *Id.* at p. 23.

⁹⁸ FOX Audit Committee Charter, *available at* <https://media.foxcorporation.com/wp-content/uploads/prod/2022/06/17200323/FOX-Audit-Committee-Charter-Last-Amended-June-2022.pdf>.

⁹⁹ *Id.*

the Company's major financial and other risk exposures and the steps that have been taken to monitor and control such exposures, and provide guidance to the Board on such matters.¹⁰⁰

103. The Committee also establishes and oversees procedures utilized to evaluate alleged violations of the Standards of Business Conduct.¹⁰¹

4. The Nominating and Corporate Governance Committee Charter

104. The Charter of the Board's Nominating and Corporate Governance Committee charged that Committee with several duties, including: (i) developing and recommending to the Board a Statement of Corporate Governance containing a set of corporate governance principles; and (ii) advising and making recommendations to the Board on corporate governance matters.¹⁰²

105. The Governance Committee Charter obligates members of the Committee to meet and report on the meeting to the Board, including reporting its actions and recommendations to the Board.¹⁰³

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² FOX Nominating and Corporate Governance Committee Charter, *available at* <https://media.foxcorporation.com/wp-content/uploads/prod/2023/02/15184249/FOX-Nominating-and-Corporate-Governance-Committee-Charter-February-2023.pdf>.

¹⁰³ *Id.*

5. FOX's 2022 Corporate Social Responsibility Report

106. FOX prepares annually and makes available to investors a Corporate Social Responsibility Report (“CSRR”), which is available on its website, foxcorporation.com.¹⁰⁴ The CSRR provides:

The Board of Directors plays an active role in developing our overall business and risk management strategies including issues relating to our corporate social responsibility. In particular, the Nominating and Corporate Governance Committee of the Board oversees, reviews and monitors the Company's efforts on sustainability and corporate social responsibility and related risks, including reporting with respect thereto, and provides guidance to the Board of Directors on such matters.¹⁰⁵

107. With respect to ethics and compliance program oversight, the CSRR provides:

The Audit Committee of the Board of Directors has responsibility for the content and operation of FOX's business ethics and compliance program, including anti-bribery and corruption programs as well as any legal or regulatory matter that could have significant impact on FOX's financial statements. The Chief Ethics and Compliance Officer reports to senior management and to the Audit Committee about existing compliance programs and proposed new initiatives. The Company has adopted several operational compliance policies and programs, including an Anti-Bribery and Anti-Corruption Policy, an Insider Trading and Confidentiality Policy, a Political

¹⁰⁴ See FOX Corporate Social Responsibility Report 2022, available at <https://investor.foxcorporation.com/static-files/f8ff4d41-27bf-4853-9104-a3fe10e692b3>.

¹⁰⁵ *Id.* at 5.

Activities Policy, and a Global Sanctions, Anti-Boycott and Import/Export Policy. FOX's Chief Ethics and Compliance Officer leads the Company's ethics and compliance program and assists the Board of Directors in fulfilling its oversight duties concerning compliance with applicable laws, regulations and accounting standards, and the dissemination of true and accurate information. On behalf of senior management, the Chief Ethics and Compliance Officer ensures processes are fully embedded in the business.¹⁰⁶

108. As a media and entertainment company, FOX is required to follow the standards of the Sustainability Accounting Standards Board ("SASB"). The SASB requires, with respect to the topic of Journalism Integrity, media companies to comply with an accounting metric (Code SV-ME-270a.3), requiring a description of a company's "approach for ensuring journalistic integrity of news programming related to: (1) truthfulness, accuracy, objectivity, fairness, and accountability, (2) independence of content and/or transparency of potential bias, and (3) protection of privacy and limitation of harm."¹⁰⁷

109. With respect to this SASB accounting metric, FOX reported:

Accuracy and editorial independence: Our news organizations carefully vet sources and check facts, and we maintain strict separation between revenue sources and our news and opinion content.¹⁰⁸

¹⁰⁶ *Id.*

¹⁰⁷ FOX CSRR at 45.

¹⁰⁸ *Id.* at 41.

110. Defendants' actions/inactions violated the Statement of Corporate Governance, the Standards of Business Conduct, the Corporate Social Responsibility policies, and the SASB standard. Indeed, as confirmed by numerous witnesses in the Dominion Lawsuit, Fox News did not vet sources and check facts before it reported and perpetuated President Trump's claims of election fraud.¹⁰⁹

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

111. Plaintiff brings this action derivatively in the right and for the benefit of FOX to redress injuries suffered, and to be suffered, by FOX as a direct result of Defendants' breaches of fiduciary duty.

112. Plaintiff is a stockholder of FOX, was a stockholder of FOX at the time of the wrongdoing alleged herein and has been a stockholder of FOX continuously since that time,

113. Plaintiff will adequately and fairly represent the interests of FOX and its stockholders in enforcing and prosecuting this type of action.

114. The Board at the time this litigation commenced (and therefore the "Demand Board" subject to any demand analysis) consisted of eight directors: Rupert, Lachlan, Carey, Hernandez, and Nasser, Dias, Ryan, and Burck. All members of the Demand Board, other than Burck, were Board members at the time of the 2020 Presidential election and when FOX endorsed and broadcast the election

¹⁰⁹ See Dominion Opp. at 165.

conspiracy theory that Dominion and/or Smartmatic rigged the 2020 Presidential election.

115. Plaintiff has not made any demand on the Demand Board to institute this action because such a demand would be a futile, wasteful, and useless act. There is no independent and disinterested majority of directors on the Demand Board as all of the Defendants face a substantial likelihood of liability for their role in FOX's misconduct.

116. Defendants' failure of oversight reflects a conscious and deliberate disregard of their fiduciary duties – namely, inaction in the face of circumstances that plainly called for immediate action. This constitutes bad faith. As such, Defendants face a substantial likelihood of liability, rendering demand upon them futile.

117. Defendants served as directors of the Company during some or all of the wrongdoing alleged herein and knew of the wrongdoing but failed to act in the face of a known duty to act. Each Defendant attended the November 10-12 Board meeting during which the Board discussed Fox News' election fraud coverage. Moreover, Rupert and Lachlan were aware that Fox News was broadcasting an enormous amount of misinformation to perpetuate the myth that the 2020 Presidential election had been rigged by Dominion and/or Smartmatic in favor of Biden, yet they failed in their obligations to take steps to remedy the situation –

despite the fact that Rupert admitted “[he] could have. But [he] didn’t”¹¹⁰ tell Scott to stop the false election fraud story – and thereby permitted FOX to knowingly lie to the public so as to regain Fox News viewers and market share.

118. For these reasons, each Defendant faces a substantial likelihood of liability for their participation in the defamatory and improper acts. The sustained failure of the Board to ensure effective corporate governance and compliance with the Company’s own internal policies of ensuring journalistic integrity of news programming related to truthfulness, accuracy, objectivity, fairness, and accountability¹¹¹ can only have been a result of the Defendants’ knowing breach or reckless disregard for their fiduciary duties. Defendants’ failure to take steps to prevent or remedy the situation or take any action resulted in, or will result in, substantial corporate losses. For these reasons, the Defendants’ decision to not act was not made in good faith and was contrary to the best interests of the Company.

119. Defendants’ conduct resulted in a violation of, among other things, these Defendants’ fiduciary duties of good faith and loyalty, as well as FOX’s own Corporate Social Responsibilities initiatives (as reported in FOX’s annual CSRR), SASB accounting metrics, the Nominating and Corporate Governance Committee Charter, the Audit Committee Charter, FOX’s Statement of Corporate Governance

¹¹⁰ Dominion Opp. at 30.

¹¹¹ See FOX CSRR at 45.

and Standards of Business Conduct. Thus, Defendants each face a substantial likelihood of personal liability for their acts in connection with these actions, rendering a demand upon them futile.

120. **Rupert** is the Chair of FOX and, as a named executive officer of the Company, he receives substantial monetary compensation and other benefits. According to FOX's most recent annual proxy statement,¹¹² Rupert's total compensation for fiscal years ended June 30, 2022, June 30, 2021 and June 30, 2020 was \$18,436,774, \$31,120,298, and \$33,983,126, respectively.¹¹³ FOX admits in its annual proxy statement and other public filings that Rupert is not an independent director.¹¹⁴ Furthermore, as detailed herein, documents and testimony from the Dominion Lawsuit demonstrate that Rupert knew Fox News hosts endorsed falsehoods about the 2020 Presidential election, he actively participated in FOX's efforts to win back its viewers, and he could have stopped Fox News' false reporting, but he didn't. For these reasons, Rupert is incapable of impartially considering a stockholder demand to commence and vigorously prosecute this action.

¹¹² See FOX Annual Proxy Statement, filed with the SEC on Sept. 19, 2022, available at <https://www.sec.gov/edgar/browse/?CIK=1754301&owner=exclude> (the "2022 Proxy Statement").

¹¹³ *Id.* at 45.

¹¹⁴ *Id.* at 2.

121. **Lachlan** is the Executive Chair of the Board and FOX’s CEO and, as a named executive officer of the Company, he receives substantial monetary compensation and other benefits. According to FOX’s 2022 Annual Proxy, Lachlan’s total compensation for 2022, 2021 and 2020 was \$21,748,681, \$27,675,399, and \$29,154,460, respectively. FOX admits in its 2022 Annual Proxy and other public filings that Lachlan is not an independent director.¹¹⁵ Furthermore, as detailed herein, documents and testimony from the Dominion Lawsuit demonstrate that Lachlan knew of, and actively participated in, Fox News’ coverage of the fictitious election fraud claimed by Trump and his advisors in an effort to win back viewers. For these reasons, Rupert is incapable of impartially considering a stockholder demand to commence and vigorously prosecute this action.

122. While FOX’s public filings claim all directors – other than Rupert and Lachlan – are independent directors, numerous facts call into question the remaining directors’ conflicts of interest and ability to act with disinterest and independence.

123. **Carey** has a long history working for Rupert over 25 years. Carey has been described as a “longtime friend and close advisor to media magnate Rupert Murdoch.”¹¹⁶ As confirmed by Ryan, Carey attended the November 10-12, 2020

¹¹⁵ *Id.* at 2.

¹¹⁶ Mike Pryson, *10 things we know about F1 new chairman Chase Carey*, AUTOWEEK (Sept. 22, 2016) available at

FOX Board in-person meeting.¹¹⁷ The FOX Board considers Carey to be an independent director.¹¹⁸ Carey first came to work with FOX (then 21CF) in 1988 and served in numerous roles over the following 20 years, including as Co-Chief Operating Officer from 1996-2002, as a consultant from 2002-2003, and as director from 1996-2007.¹¹⁹ During that time, Carey helped launch both Fox News and Fox Sports.¹²⁰ Carey returned to 12CF in 2009 and Carey served as President and COO of 21CF and Deputy Chairman of the 21CF Board until 2015.¹²¹ Carey then served as Executive Vice Chairman of 21CF from 2015-2016, then served as a consultant to 21CF from 2016-2018.¹²² From 2010 to 2014, Carey served on the Supervisory Board of Sky Deutschland, at a time when Rupert was that company's largest stockholder, and Carey served as its Chairman from 2010 to 2013. In 2019, he

<https://www.autoweek.com/racing/formula-1/a1854681/10-things-we-know-about-new-fl-chairman-chase-carey/>.

¹¹⁷ *Id.* at 22.

¹¹⁸ *See* 2022 Proxy Statement at 2.

¹¹⁹ *See* FOX Annual Proxy Statement, filed with the SEC on Sept. 23, 2019, at 4, *available at* <https://www.sec.gov/Archives/edgar/data/1754301/000119312519252169/d802602ddefl4a.htm> (“2019 Proxy Statement”).

¹²⁰ Mike Pryson, *10 things we know about F1 new chairman Chase Carey*, AUTOWEEK (Sept. 22, 2016) *available at* <https://www.autoweek.com/racing/formula-1/a1854681/10-things-we-know-about-new-fl-chairman-chase-carey/>.

¹²¹ 2019 Proxy Statement at 4.

¹²² *Id.*

became a director of FOX. FOX's 2019 and 2020 Annual Proxy Statements admit that Carey was not an independent director at the time of those filings.¹²³ In fiscal year 2022, Mr. Carey was paid \$309,986 for his service as a director, and he was also paid \$1,206,666 in pension payments and \$77,460 in imputed income under the Company's executive health and welfare plans for his prior service as an executive officer of 21CF as a result of post-employment contractual obligations.¹²⁴ Carey's substantial compensation for nearly 40 years of working for Rupert render Carey beholden to Rupert. In addition to the fact that his decades-long friendship with Rupert and the substantial amount of money Carey has earned from Murdoch-owned companies renders Carey incapable of making an independent and disinterested decision to institute this derivative action, because Carey attended the FOX Board November 11-12 in-person meeting where FOX's election coverage was discussed, and failed to take timely action to end Fox News' election fraud lies in violation of his fiduciary duties, he faces a substantial likelihood of personal liability thereby rendering demand on him futile.

¹²³ See FOX 2020 Annual Proxy Statement, filed with the SEC on Sept. 23, 2020, at 1, *available* *at* <https://www.sec.gov/Archives/edgar/data/1754301/000119312520252286/d935268ddef14a.htm>.

¹²⁴ 2022 Proxy Statement at 56.

124. Nasser served on the Board of 21CF from 2013-2019, until he joined the FOX Board in 2019. Nasser attended the November 10-12, 2020 FOX Board in-person meeting and failed to take any action in response to the known falsehoods being broadcast on Fox News.¹²⁵ In fiscal year 2022, Nasser received \$339,986 for serving on the FOX Board.¹²⁶

125. Hernandez joined the FOX Board in 2019. Hernandez attended the November 10-12, 2020 FOX Board in-person meeting and failed to take any action in response to the known falsehoods being broadcast on Fox News.¹²⁷ In fiscal year 2022, Hernandez received \$344,986 for serving on the FOX Board.¹²⁸

126. Hernandez and Nasser are further conflicted from considering demand because they each face a substantial likelihood of liability as a result of their conduct on the Audit Committee. Hernandez and Nasser served on the Board and the Audit Committee at all relevant times including during FOX News' coverage of the 2020 Presidential election. As set forth above, the Audit Committee's charter imposes specific duties on members of this committee to oversee procedures utilized to evaluate alleged violations of FOX's SBC, which requires accuracy of information,

¹²⁵ *Id.* at 22.

¹²⁶ *Id.* at 56.

¹²⁷ *Id.* at 22.

¹²⁸ *Id.*

clarity of opinion and quality of the Company's content, and to ensure strict separation between revenue sources and our news reporting and editorial opinions.¹²⁹ The Audit Committee is also to oversee the SBC's mandate to ensure that FOX does not do anything that would harm the Company's reputation or that would otherwise bring FOX into disrepute.¹³⁰ These Defendants violated their fiduciary duties to act in good faith to address the violations of the SBC that occurred when Fox News knowingly spread inaccurate information and poor quality content regarding a fabricated election fraud.

127. Documents filed in the Dominion Lawsuit, for example, demonstrate that at least Board members Rupert, Lachlan, Dias, and Ryan were aware that FOX and Fox News were concerned that they were losing viewers and their ratings were suffering because of Fox News' "early" prediction that Biden had won the vote in Arizona and that Fox News endorsed and reported false information that Dominion and Smartmatic had rigged the 2020 Presidential election in an effort to win back viewers and its market share. In addition, Ryan confirmed that each FOX Board member attended in-person Board meetings from November 11-12, 2020 and did not deny that the topic of Donald Trump spreading baseless election conspiracy theories was discussed. Despite the fact that numerous news sources – including

¹²⁹ See FOX SBC at 3.

¹³⁰ *Id.* at 23.

The Wall Street Journal controlled by Rupert's News Corporation – and White House officials were reporting that the election fraud claims were nonsense, Defendants failed to take action to stop the false reporting in violation of their fiduciary duties.

128. Defendants face a substantial likelihood of personal liability because they deliberately disregarded red flags of Fox News' improper and inaccurate reporting of false facts to perpetuate a conspiracy that the 2020 Presidential election was rigged by Dominion and/or Smartmatic.

129. As alleged herein and based on the duties imposed pursuant to the Company's SBC and Corporate and Social Responsibility mandates, and Delaware law, the Defendants were aware of indicators and warnings that necessarily informed them of the false and defamatory statements and reports taking place within the Company.

130. Given the duties placed on the Board, to the extent any of the Defendants did not have actual knowledge of the intentional false and defamatory reporting taking place at Fox News – at the direction of FOX executives Rupert and Lachlan – such lack of knowledge could only be the product of willful disregard or recklessness that constitutes bad faith of their duties.

COUNT I

BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS IN THEIR CAPACITY AS DIRECTORS

131. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

132. Defendants all owed and owe fiduciary duties to FOX. By reason of their fiduciary relationships, Defendants specifically owed and owe FOX the highest obligation of good faith and loyalty in the administration of the affairs of FOX, including assuring that FOX complied with applicable laws and its own internal policies. The Board also had specific fiduciary duties as defined by the Company's corporate governance documents and principles that, had they been discharged in accordance with the Board's obligations, would have prevented the misconduct and consequential harm to FOX alleged herein.

133. Defendants willfully ignored their fiduciary obligations under the law, FOX's internal corporate policies and mandates and ignored numerous sources of information confirming that Fox News was repeatedly endorsing and reporting false information that the 2020 Presidential election had been rigged by Dominion and/or Smartmatic in favor of Joe Biden. Defendants failed to make a good faith effort to correct the problems or prevent numerous defamatory statements made by the Company.

134. Defendants consciously violated their corporate responsibilities by affirmatively and repeatedly declining to stop and prevent FOX and Fox News from publicly perpetuating a story of election fraud, even after receiving numerous indicators that Fox News was intentionally reporting misinformation of election fraud in an effort to rebuild its viewer base.

135. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned, and abdicated their responsibilities and duties with regard to prudently managing the business of FOX in a manner consistent with the duties imposed upon them by law.

136. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and loyalty in the management and administration of FOX's affairs and in the use and preservation of FOX's assets.

137. As a direct and proximate result of the Defendants' conscious failure to perform their fiduciary obligations, FOX has sustained, or will sustain, significant damages, not only monetarily, but also to its corporate image and goodwill. Such damage includes, among other things, a potential monetary judgment in excess of \$4 billion against the Company as a result of the pending defamation lawsuits brought by Dominion and Smartmatic against FOX and/or Fox News, in addition to substantial litigation expenses resulting from defending those litigations.

138. As a result of the misconduct alleged herein, Defendants are liable to the Company.

COUNT II

BREACH OF FIDUCIARY DUTY AGAINST RUPERT AND LACHLAN IN THEIR CAPACITY AS OFFICERS

139. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

140. Rupert and Lachlan are the two highest-ranking officers of FOX and owed duties of care, good faith, and loyalty to the Company and its stockholders.

141. Rupert and Lachlan breached their duty of care by exercising inadequate oversight over enterprise risk management.

142. Rupert and Lachlan breached their duty of loyalty by willfully engaging in misconduct and violating internal Company policies and mandates by allowing Fox News to repeatedly endorse and report false information that the 2020 Presidential election had been rigged by Dominion and/or Smartmatic in favor of Joe Biden.

143. Rupert and Lachlan consciously violated their corporate responsibilities as officers of the Company by affirmatively and repeatedly declining to stop and prevent FOX and Fox News from publicly perpetuating a story of election fraud, even after receiving numerous indicators that Fox News was

intentionally reporting misinformation of election fraud in an effort to rebuild its viewer base.

144. These breaches of fiduciary duty have harmed the Company by harming its reputation and good will and subjecting the Company to two defamation lawsuits that could result in significant damages, in addition to substantial litigation expenses resulting from defending those litigations.

145. As a result of the misconduct alleged herein Lachlan is liable to the Company for his breaches of fiduciary duty.

COUNT III

BREACH OF FIDUCIARY DUTY AGAINST RUPERT IN HIS CAPACITY AS CONTROLLER

146. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

147. Rupert is the controlling stockholder of FOX and, as such, owed and continues to owe Plaintiff and the Company the highest obligation of due care, loyalty and good faith.

148. By reason of the foregoing, Rupert breached his fiduciary duties by abusing his control of the Company to allow Fox News to broadcast, perpetuate and endorse a false election fraud story in connection with the 2020 U.S. Presidential election in order to maintain the network's ratings and viewers, who FOX knew were politically conservative and supported then-President Trump.

149. As a result of the misconduct alleged herein, Rupert is liable to the Company for the damages resulting directly and proximately from his breaches of fiduciary duty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under law and demand on the FOX Board is excused;

B. Awarding against all Defendants and in favor of the Company the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

C. Awarding to FOX restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Defendants;

D. Directing FOX to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with the Company's existing governance obligations and all applicable laws and to protect the Company and its stockholders from a recurrence of the damaging events described herein;

E. Awarding to Plaintiff the cost and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

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