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August 3, 2017

**VIA EMAIL**

Ms. Sharon White  
Chief Executive, Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Re: Claims Against Twenty-First Century Fox, Inc., et al.

Dear Ms. White:

On August 1, 2017, we filed a civil action on behalf of our client, Rod Wheeler, against his employer Twenty-First Century Fox, Inc. (“21st Century Fox” or the “Company”), that contains facts that you may find relevant as to an assessment whether 21st Century Fox should be permitted to purchase Sky plc (“Sky”). All of the quotes in the complaint have been verified by either email, text, or a recorded conversation. Notably, Mr. Wheeler’s allegations concern conduct by the Company, and its senior executives, that relate to the two public interest considerations reviewed by Ofcom: plurality and commitment to the attainment of broadcast standards. In connection with these two public interest considerations, you may find that the allegations in this lawsuit shed new light on whether 21st Century Fox Executives were forthcoming and transparent with Ofcom during its investigation, as well as the question whether 21st Century Fox is capable of accurately and truthfully delivering news to the public.

**I. Complaint Filed on Behalf of Rod Wheeler**

Rod Wheeler is a former Washington D.C. Police homicide detective and current private investigative consultant, crime analyst and Fox News Network LLC (“Fox News”) contributor. We commenced an action in federal court on Mr. Wheeler’s behalf against 21st Century Fox, Fox News (together with 21st Century Fox, “Fox”), Malia Zimmerman, a Fox reporter, and Ed Butowsky, a contributor to Fox and Fox Business Channel (the “Individual Defendants”), asserting claims for defamation *per se* resulting from conduct engaged in by all Defendants. See Complaint, Wheeler v. Twenty-First Century Fox, Inc., et al., Index No. 17-cv-05807 (United States District Court, Southern District of New York), attached here as Exhibit A.

The basis for Mr. Wheeler’s lawsuit arose from an article published by Fox on May 16, 2017 (the “Article”) that claimed to have new evidence that suggested Russian email hackers were not responsible for leaking emails from the Democratic National Committee (“DNC”) to Wikileaks during the 2016 U.S. Presidential primaries. See Article, attached here as Exhibit B. In the Article,

authored by Ms. Zimmerman, she alleged that a murdered DNC staffer, Seth Rich, had provided Wikileaks with thousands of emails from the DNC and suggested that Mr. Rich was murdered by a Democrat operative because he leaked the emails.<sup>1</sup> In May 2017, the Trump administration was in the midst of disputing its alleged collusion with Russia during the Presidential campaign and it was desperate to debunk reports that Russian hackers were responsible for providing the DNC emails to Wikileaks. As such, news about an alternative source of the emails to Wikileaks was highly beneficial to President Trump and his administration.

**A. The Article Creates Fake News by Falsely Quoting Mr. Wheeler**

The only source named in the Article by Ms. Zimmerman was Mr. Wheeler. Ms. Zimmerman included two critical, but substantively false, statements purportedly made by Mr. Wheeler. Specifically, the Article included the following quotes:

“My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,” said Wheeler.”

“My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” Wheeler said. “That is unfortunate. Seth Rich’s murder is unsolved as a result of that.”

Ex. B. After the Article was published, members of the media and the public subjected Mr. Wheeler to unrelenting attacks and questioned the veracity of his statements and the integrity of his investigation into Mr. Rich’s murder. Mr. Wheeler immediately contacted Ms. Zimmerman and Mr. Butowsky to retract the statements falsely attributed to him, but they refused to disclose the truth about what had happened and allowed the public’s wrath to continue against Mr. Wheeler. Shamefully, Fox stood by the content of the Article, notwithstanding Mr. Wheeler’s protestations.

At all times, Fox Executives were aware that news deflecting Russian involvement in the DNC email hacking would prove beneficial to President Trump and his administration. Further, Fox knew about Mr. Butowsky’s connections with President Trump and his insiders, including Sean Spicer, Steve Bannon, and Sarah Flores. See Ex. A at ¶¶ 5, 10, 15, 38-40. Numerous examples that demonstrate the political motivations underlying the decision to publish the Article by Fox executives, Ms. Zimmerman, and Mr. Butowsky are set forth in the Complaint.

As alleged, on May 16, 2017, Mr. Wheeler called Ms. Zimmerman and confronted her about the use of false statements and Ms. Zimmerman told Mr. Wheeler that she would have the statements removed from the article. Id. at ¶¶ 85-86. However, the statements were not removed and, later

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<sup>1</sup> The extensive facts surrounding the murder of Seth Rich, the ongoing investigation into his death by the Washington D.C. police, and the possible connections with hacking in the DNC are detailed in the attached Complaint and are not repeated here. See Ex. A.

that day, Ms. Zimmerman told Mr. Wheeler that she had been **instructed by her bosses at Fox News to leave the false quotes in the story.** *Id.* Later that day, Mr. Wheeler informed various media outlets that he had been misquoted and made clear that he had not seen any emails between Seth Rich and Wikileaks, nor had he ever even seen Seth Rich's computer. Unfortunately, by that time, the damage to Mr. Wheeler's professional reputation as an investigator and reporter was done. *Id.* at ¶¶ 104-108.

Broadcasting standards require integrity and commitment to attaining a high level of accuracy. As the texts, emails and audio recordings quoted in the complaint demonstrate, Mr. Butowsky enjoyed freedom of communication with a number of senior Fox producers and anchors about the content of the Article. Although Ms. Zimmerman was the Fox reporter responsible for the Article, based on Mr. Butowsky's email to Fox producers and hosts, he discusses the fact that he was the force behind the journalism:

**“If you have any questions about the story or more information needed, call me at 972-XXX-XXXX. I’m actually the one who’s been putting this together but as you know I keep my name out of things because I have no credibility.”**

Ex. A at ¶¶ 15, 78. Mr. Butowsky's representations suggest something more than “low” broadcasting standards. His claims suggest a failure to adhere to *any* standards. Fox must account for this failure and demonstrate why the public should have confidence in its commitment to broadcasting standards. On May 23, 2017, rather than account for what happened, Fox publicly stated that it was internally investigating what went wrong. Just seven days later, on May 30, 2017, James and Lachlan Murdoch met with Ofcom. Since the Murdochs have taken personal responsibility for cleaning up the Company, it is shocking that James and Lachlan Murdoch failed to disclose the Article and the facts surrounding what happened to Ofcom.

The sincerity of a new compliance procedure is called into question by the eagerness of Fox to perpetuate the fake news and broadcast the Article through its highest channels. By way of example only, Fox talents such as Sean Hannity and Steve Doocy used the Article as a means to provide extensive broadcast coverage in support of a theory that Russian hackers were not responsible for the DNC email breach. These four segments aired following the Article:

- May 16: Steve Doocy: If the Seth Rich story is true, “it looks like Russia didn't give to WikiLeaks.”
- May 16: Sean Hannity: “Explosive developments” in Seth Rich story “could completely shatter the narrative that in fact WikiLeaks was working with the Russians, or there was collusion between the Trump campaign and the Russians.”

- May 18: Sean Hannity: “If Rich, in fact, was WikiLeaks’ source for DNC email leaks, it would confirm Russia was not involved. ... Wouldn’t that blow the Russian collusion narrative that the media has been pushing out of the water?”
- May 19: Sean Hannity: “What if it was somebody that was so disgruntled in the DNC at how they cheated Bernie and how the fix was in, if that turned out to be true that somebody did that, wouldn’t that completely wipe out the entire Russia lie we’ve heard for months and months?”

You may find that such examples provide greater context for representations made by Fox during its meetings with Ofcom.

**B. Mr. Wheeler is Forced to Meet with Dianne Brandi and Jay Wallace**

Finally, on May 23, 2017, Fox retracted the Article and issued the following:

“The May 16 story was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed.”

“We will continue to investigate this story and will provide updates as warranted.”

Fox failed to clear Mr. Wheeler’s name and never admitted that Ms. Zimmerman had misquoted him. Mr. Wheeler requested to meet with Dianne Brandi, Fox News’s Executive Vice President, Legal and Business Affairs, and Jay Wallace, Fox News’s Executive Vice President of News and Editorial. Mr. Wheeler told Ms. Brandi and Mr. Wallace that he had not provided Ms. Zimmerman with the quotations she used in her article and explained that Ms. Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding Wikileaks that she attributed to him in the article. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him.

**II. Fox Executives Knowingly Failed to Disclose the Company’s Willingness to Disseminate Fake News and to Influence Politics**

According to the reports issued by Ofcom in connection with the Sky takeover, senior Fox Executives met with regulators on multiple occasions to discuss the Company’s corporate governance standards and to dispute claims that it was fit and proper to hold broadcast licenses. It is our understanding that Fox Executives, including Gerson Zweifach (“Zweifach”), General Counsel and Chief Compliance Officer of 21st Century Fox, met with Ofcom on at least four

occasions, including March 27, 2017, April 11, 2017, May 11, 2017 and May 30, 2017, to discuss Fox's ability to report the news in a nonpartisan manner. As such, it appears that these meetings occurred at the same time that Fox apparently was helping the Trump administration divert public attention away from the Russian hacking scandal as described in the Complaint.

The fact that Fox was contriving with Mr. Butowsky, Ms. Zimmerman and members of the Trump administration to publish and disseminate fake news to affect politics in America may be relevant and important in your consideration as to whether 21st Century Fox is capable of complying with U.K. broadcast licenses. You may consider the timing of the Article's publication important for a separate reason. On June 20, 2017, Ofcom published its decision (the "Decision") as to whether Sky was "fit and proper to hold a broadcast licence."<sup>2</sup> As part of the Decision, under the heading "Fox News' compliance procedures," paragraph 36 reads:

During the course of our investigation of the proposed transaction, we found that Fox had not put in place adequate procedures to ensure the compliance of Fox News with the Broadcasting Code. We wrote to Fox to express our concerns. Fox has now supplied us with **details of new compliance arrangements introduced on 15 May 2017**. We consider that the improvements made by Fox to its compliance arrangements and procedures are sufficient to meet the requirements of its licence.

(emphasis added). The Article was published by Fox **on May 16, 2017**. This fact suggests Fox breached its "new compliance" protocol just 24 hours after its alleged implementation.

Based on the foregoing, further questioning of Fox Executives is necessary to assess whether the Company was transparent during meetings with Ofcom. While Ofcom has no duty to assess the veracity of complaints filed in the U.S., the facts here involve recent conduct by the Company and contradict the Company's representations that since July 2016, it has adopted new measures to maintain adequate internal governance. To the contrary, the Company's conduct, including that of the highest executives at Fox, may demonstrate that there is a risk that it will act to influence political agendas in the U.K.

### **III. Fox's Claims That It "Cleaned House" Are False**

Ofcom reported that it received thousands of submissions in connection with its assessment whether Fox could takeover Sky and comply with "fit and proper" standards. Our Firm submitted information to Ofcom about the twenty-one individuals that we represented in various federal and state legal actions that involved claims involving egregious and systemic gender discrimination, sexual harassment and racial and national origin discrimination. Despite our submissions, Ofcom

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See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0013/103621/decision-fit-proper.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0013/103621/decision-fit-proper.pdf).

determined that Fox's executives were unaware of allegations of sexual or racial discrimination until July 2016, and thereafter, promptly "cleaned house."

Our clients will be able to testify to the contrary. See Brown, et al. v. Twenty-First Century Fox, Inc., et al., Index No.: 22446/2017E (N.Y. Sup. Ct., Bronx County) (the "Brown Action"); Blanco, et al. v. Twenty-First Century Fox, Inc., et al., Civil Action No.: 17-03017 (United States District Court, Southern District of New York); and Lee v. Twenty-First Century Fox, Inc., et al., Civil Action No. 17-03835 (United States District Court, Southern District of New York) (collectively, the "Actions"). Indeed, as alleged in these cases, executives at the highest levels at Fox knew about sexual or racial discrimination for years – yet, opted to quietly dispose of the complaining employees and cover up the hideous conduct by Fox managerial employees. These Actions show that as early as 2008, Ms. Brandi and Denise Collins, the former Head of Human Resources, knew about discrimination, yet took steps to eliminate the victimized employees rather than fix the problem. Proof that these senior executives knew is in the form of, *inter alia*, emails, internal Fox documents and contemporaneous notes made by our clients. Moreover, if Ofcom were to request from Fox any sexual or racial discrimination allegations, either formal or informal, that it received from 2003 through July 2016, we are confident that that you would find many other allegations of this nature.

#### **IV. Fox Has Walked Back Promises of Systemic Changes Before: The 2006 Consent Decree**

Also undermining any contention that Fox Executives were unaware of sexual discrimination allegations prior to July 2016 is a 2006 Consent Decree (the "Consent Decree") entered by the Hon. William H. Pauley, a judge in the United States District Court, Southern District of New York, against Fox News Network LLC, in connection with claims by four former Fox employees that Fox:

"Discriminated against [plaintiff] and a class of similarly situated women by subjecting them to harassment, a hostile environment and disparate treatment because of their sex."

See Consent Decree, attached hereto as Exhibit C (emphasis added). It is quite uncommon for a company to enter into such a Decree, and any contention that executives were unaware of this Consent Decree is unlikely or demonstrates a reckless disregard of the seriousness of such a Decree entered into with the federal government agency designated to prevent and prosecute discrimination claims. The Consent Decree included the condition that Fox agreed to implement training to all employees to educate them about federal laws prohibiting discrimination and that Fox will repeat such trainings on an annual basis. Additionally, Fox was required to provide individualized training sessions to a certain "vice president and supervisor" in the advertising and promotions department. See Exhibit C at ¶ 12. Notably, Dianne Brandi signed the Consent Decree. Id. at p. 6. Based on the number of incidents involving Fox Executives' willful and abhorrent discrimination as against their employees, Fox's failure to comply with the Consent Decree is obvious. Even if Fox shows that it managed to organize internal "trainings" as per the

Consent Decree, such abuses involving our clients could not have continued to manifest and expand had Fox taken the Consent Decree seriously.

**V. Fox Engages in Continued and Severe Retaliation**

It is difficult to understand how Fox purports to have “cleaned house” and adopted proper internal governance when executives at the Company continue to approve repeated retaliation against many of our clients who dared to speak out about the horrific treatment by Fox. By way of example only, in March 2017, our client Tichaona Brown was terminated just days after attempts to negotiate her claims with Fox failed and our firm notified Fox of an imminent filing of the Brown Action. Additionally, our client Lidija Ujkic commenced an action against Fox in December 2016, alleging claims of pregnancy and gender discrimination, and national origin discrimination. Since that time, with approval from top Fox executives, Fox has engaged in an endless campaign to harass, intimidate and retaliate against Ms. Ujkic. In addition to ignoring our Firm’s multiple letters to cease and desist its discriminatory conduct, Fox’s unabated conduct forced us to amend Ms. Ujkic’s complaint to add causes of action for retaliation. See Amended Complaint, attached hereto as Exhibit D. Worse, as recently as last week, Fox accused Ms. Ujkic of various misdeeds, presented her with a “written warning” and threatened her with additional “discipline.” Furious that Ms. Ujkic dared to disclose the abhorrent conduct of the head of Fox’s New York City affiliate, Byron Harmon, Fox will go to any length to belittle, micro-manage and bully Ms. Ujkic each day she reports to work in an effort to cause her to break down and quit.

Should Ofcom wish to meet in person with members of our Firm, as well as some of our clients who continue to be subjected to discrimination by Fox, we are willing and able to travel to your offices and provide documentary evidence of Fox’s conduct.

**VI. Media Plurality**

On June 29, 2017, the U.K.’s Secretary of State for Culture, Karen Bradley, announced her intent to refer the potential Fox/Sky deal to the Competition and Markets Authority (“CMA”) for a six-month investigation into “media plurality” concerns. If referred, the CMA will determine whether the sale of Sky to Fox would create a danger that one individual, Rupert Murdoch, and his family would control too much of the media and be able to, among other things, set the political agenda. Ms. Bradley also has the authority to refer the Fox/Sky deal to CMA for an investigation into whether Fox has a genuine commitment to broadcasting standards.

The allegations in the Wheeler Action raise serious concerns about the willingness of Mr. Murdoch’s media machine to invest resources into furthering a political agenda in line with the family’s own views. With 100% control of Sky, there could be no independent board members to exercise scrutiny, and no ability to reign in the Murdochs’ efforts to dominate broadcast news agendas. Mr. Murdoch, through Fox, already controls a vast amount of media enterprises. Pursuant to the regulations, there is “to be a sufficient plurality of persons with control of media enterprises.” Allowing Fox to control more media creates the likely result of a political agenda

narrowed to tailor the objectives of one family, and the individuals hired and employed by them, to further their own financial and policy objectives.

Notwithstanding Ofcom's inquiries into Fox's ability to convey news accurately and in a nonpartisan manner, the longstanding alliance between Mr. Murdoch's media conglomerate and Donald Trump appears only to have deepened since President Trump's administration took over the White House. Importantly, both Fox and the Trump Administration flout their close collaboration. By way of example only, last week President Trump dined with Fox's star host Sean Hannity, former Fox co-president Bill Shine and the former White House communications director Anthony Scaramucci. According to *The Washington Post*, a senior White House official said that the four men met to "discuss overhauling the West Wing staff and [Trump's] political strategy."

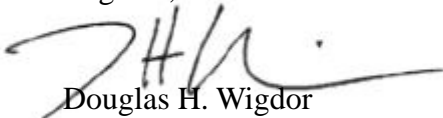
[https://www.washingtonpost.com/news/post-politics/wp/2017/07/26/trump-dines-with-sean-hannity-ousted-fox-executive-bill-shine-and-scaramucci/?utm\\_term=.56065337c58a](https://www.washingtonpost.com/news/post-politics/wp/2017/07/26/trump-dines-with-sean-hannity-ousted-fox-executive-bill-shine-and-scaramucci/?utm_term=.56065337c58a)

Our clients' cases show a pattern of corporate culture at Fox that is impossible to ignore. Outside of Fox's self-serving testimony to the contrary, all evidence leads back to the certainty that Fox Executives were emboldened to act with reckless disregard to the civil rights of their employees. Such injustice stems from the signals sent from Mr. Murdoch and the individuals he selected to carry out his directives. Nothing suggests that Fox has altered its course.

## VII. Conclusion

I hope that this information is helpful to you.

Regards,



Douglas H. Wigdor

Enc.

cc: Ms. Rebecca Taylor (via email)  
Ms. Karen Bradley (via email)  
Mr. Tom Walker (via email)  
Mr. Ian O'Neill (via email)  
Mr. Sam Haylen (via email)  
Ms. Maria Alexandri (via email)  
Ms. Hannah Hood (via email)



# Exhibit A



speculation that President Trump colluded with Russia in an attempt to influence the outcome of the Presidential election. Incredibly, according to Butowsky, the President reviewed an article written by a Fox News journalist prior to its publication and sought to get the article published “immediately.” Indeed, just before Butowsky sent the text message above, he left a voicemail for Mr. Wheeler in which he said, **“A couple minutes ago I got a note that we have the full, uh, attention of the White House, on this. And, tomorrow, let’s close this deal, whatever we’ve got to do. But you can feel free to say that the White House is onto this now.”**<sup>1</sup>

3. To lend support to this shift the blame theory, Zimmerman, with the knowledge and support of Butowsky, fabricated two quotations and attributed them to Mr. Wheeler:

- “‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.”
- “‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’”

4. Mr. Wheeler – who was the only named source quoted in the article – did not make these statements. According to Butowsky, the statements were falsely attributed to Mr. Wheeler because **that is the way the President wanted the article**. Zimmerman, Butowsky and Fox had created fake news to advance President Trump’s agenda. Mr. Wheeler was subsequently forced to correct the false record and, as a result, lost all credibility in the eyes of the public. Mr. Wheeler has suffered irreparable damage to his reputation and his career will likely never recover.

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<sup>1</sup> Every quotation in this Complaint is from an email, text message, published news article and/or recorded or videotaped conversation.

5. Butowsky is a frequent contributor for Fox News and Fox Business Channel, an outspoken supporter of Donald Trump and opponent of Hillary Clinton, and a friend to former Press Secretary Sean Spicer and Chief Strategist Steve Bannon.

6. Mr. Wheeler is a former Washington D.C. Police homicide detective and current private investigative consultant, crime analyst and Fox News contributor.

7. In February 2017, Butowsky introduced himself to Mr. Wheeler and offered to bankroll an investigation into Seth Rich's murder. Butowsky explained that he was working with Zimmerman, an investigative journalist with Fox News who was conducting her own investigation into the death of Seth Rich.

8. As it turned out, Butowsky and Zimmerman were not simply Good Samaritans attempting to solve a murder. Rather, they were interested in advancing a political agenda for the Trump Administration. Specifically, it was their aim to have Mr. Wheeler confirm that: (i) Seth Rich was responsible for the leak of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.

9. Butowsky and Zimmerman hoped that, if they could confirm that Seth Rich leaked the DNC emails to WikiLeaks, that would debunk reports the Russians were responsible for the DNC hacks. In turn, Butowsky and Zimmerman hoped that, if they could shift the blame for the DNC hacks from the Russians to Seth Rich, this would undermine reports of collusion between Russia and the Trump Administration.

10. Butowsky and Zimmerman were not in this alone. Rather, in the weeks and months leading up to the publication of Zimmerman's May 16, 2017 article, Butowsky kept in regular contact with Trump Administration officials – including Mr. Spicer, Mr. Bannon and

Director of Public Affairs at the Department of Justice, Sarah Flores – regarding his efforts relating to Seth Rich.

11. As noted above, Butowsky informed Mr. Wheeler two days before Zimmerman’s article came out that President Trump had read it and wanted it published “immediately.”

12. Prior to that, Butowsky and Mr. Wheeler met with Mr. Spicer and provided him with a copy of Mr. Wheeler’s investigative notes. Mr. Spicer asked to be kept abreast of developments and, upon information and belief, Butowsky did keep Mr. Spicer abreast of developments.

13. Then, very shortly after the article was published, Mr. Wheeler called Butowsky and demanded an explanation for the false statements about him in Zimmerman’s article. Butowsky stated that *the quotes were included because that is the way the President wanted the article*, referring to President Donald Trump.

14. A few days later, Butowsky wrote to Zimmerman, “*I didn’t tell you yet but the federal government is involved at this moment, behind the scenes and believe your story.*”

15. The political motivations for the publication of Zimmerman’s May 16, 2017 article also are evidenced by many statements made between February and May 2017, including, *inter alia*,

- When Butowsky was told by controversial journalist Seymour (Sy) Hersh of a purported FBI report establishing that Seth Rich sent emails to WikiLeaks, he stated: “*the most important thing is this. Everyone, there’s so many people throughout Trump’s four years and maybe eight years are always going to fall back on the idea that he is not legitimate and the Russians got him elected. This [information about Seth Rich providing emails to WikiLeaks] changes all of that.*”
- Butowsky also said that with this information, “*[w]e solve the problem about Russians are the ones that gave the emails because that did not happen. I know that did not happen.*”

- Just before midnight on May 15, 2017, the night before the Zimmerman article was published, Butowsky sent an email regarding Zimmerman’s Seth Rich story to various Fox News producers and on air talent, including Steve Doocy, Gavin Hadden, Ainsley Earhardt and Brian Kilmeade. The email reads, in part: “If you have any questions about the story or more information needed, call me at 972-[XXX-XXXX]. I’m actually the one who’s been putting this together but as you know I keep my name out of things because I have no credibility. **One of the big conclusions we need to draw from this is that the Russians did not hack our computer systems and ste[a]l emails and there was no collusion like trump with the Russians.**”
- At approximately the same time, Butowsky sent a text message to Mr. Wheeler that reads, in part, “**[t]he narrative in the interviews you might use is that your and Malia’s work prove that the Russians didn’t hack into the DNC and steal the emails and impact our election.**”
- The next morning, Butowsky sent text messages to Mr. Wheeler that read, in part, “**If you can, try to highlight this puts the Russian hacking story to rest.**” “**Just reflecting: we need to emphasize the FBI has a report that has been suppressed that shows that Seth rich did this. With Comey recently being fired this will gain a lot of attention and it’s true.**” “**The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead.**”
- Even after Mr. Wheeler confronted Zimmerman about her use of false quotes, Zimmerman sent a text to Mr. Wheeler that stated, “**Reread the story we sent to you last night [with the false quotes] and stick to that script.**”

16. Butowsky’s reference to former FBI Director James Comey’s termination is critical. On the morning of March 30, 2017, President Donald Trump called James Comey. During the call, the President described the Russia investigation as a cloud that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia and asked what could be done to lift the cloud. The President went on to say that if there were some “satellite” associates of his who did something wrong, it would be good to find that out, but that the President hadn’t done anything wrong and hoped that Director Comey would find a way to get it

out that he was not being investigated. The Russia investigation continued and Director Comey was fired on May 9, 2017. <http://www.cnn.com/2017/06/07/politics/james-comey-memos-testimony/index.html>.

17. On May 10, 2017 – the day after President Trump fired Director Comey – Butowsky and Zimmerman called Mr. Wheeler to inform him that they had supposedly secured a source at the FBI who confirmed that emails were sent between Seth Rich and WikiLeaks. This anonymous source was cited in Zimmerman’s May 16, 2017 article.

18. The following day, on May 11, 2017, Zimmerman sent Mr. Wheeler a draft of her story regarding the Seth Rich murder. The draft did not contain any quotes from Mr. Wheeler to the effect that Seth Rich had sent any emails to WikiLeaks, nor did the draft quote Mr. Wheeler as saying that the DNC, Democratic Party or Clintons were engaged in a cover-up.

19. Three days later, Butowsky informed Mr. Wheeler that President Trump had read Zimmerman’s story and wanted it published “immediately.” Upon information and belief, President Trump wanted Zimmerman’s article published to help lift the cloud of the Russia investigation.

20. Less than 24 hours later, on May 15, 2017, Zimmerman informed Mr. Wheeler that she would be publishing her story imminently. The story was published the following morning with the false quotations from Mr. Wheeler that were clearly fabricated to lend support to the claim that Seth Rich, and not the Russians, was the source for the DNC emails released on WikiLeaks. Indeed, following the publication of the story, Zimmerman even admitted that the parts of the story regarding “the emails” and “the connection to Wikileaks” had not, in fact, come from Mr. Wheeler.

21. On May 23, 2017, Fox finally retracted Zimmerman's article and issued the following statement, "the May 16 story was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed," the statement said. "We will continue to investigate this story and will provide updates as warranted."

22. However, Fox did not clear Mr. Wheeler's name and never admitted that Zimmerman had misquoted him. As such, Mr. Wheeler requested and attended a meeting with Dianne Brandi, Fox News's Executive Vice President, Legal and Business Affairs, and Jay Wallace, Fox News's Executive Vice President of News and Editorial. Mr. Wheeler explained to Ms. Brandi and Mr. Wallace that he had not provided Zimmerman with the quotations she used in her article. He also informed Ms. Brandi and Mr. Wallace that Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding WikiLeaks that she attributed to him in the article. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him, nor has Fox apologized to Mr. Wheeler.

23. In fact, at the same time that Fox was helping the Trump Administration divert public attention away from the Russian hacking scandal, Fox Executives were testifying under oath before British regulators about how equipped the Company is to control Sky plc ("Sky"), the British media conglomerate.

24. Specifically, Fox Executives, including Gerson Zweifach ("Zweifach"), General Counsel and Chief Compliance Officer of Twenty-First Century Fox, declared to British regulators that Fox is "fit and proper" to own Sky despite the attenuating power to influence the news agenda and the political process. On at least four occasions, March 27, 2017, April 11,



2017, May 11, 2017 and May 30, 2017, Zweifach and other Fox Executives met with officials in London in an attempt to convince them that Fox had in place procedures to ensure compliance with broadcasting standards to purchase Sky, and to alleviate concerns regarding Fox's ability to influence the media.

25. Shockingly, it is clear that simultaneous with such baseless claims of nonpartisanship, Fox was contriving with Butowsky and members of the Trump Administration to publish and disseminate fake news to affect politics in America.

26. Such devious scheming is precisely why British regulators have yet to provide a green light to Fox for the Sky takeover bid, and why many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.

27. The overt alliance between Rupert Murdoch's media conglomerate and Donald Trump is longstanding. Notwithstanding Ofcom's inquiries into Fox's ability to convey news in a nonpartisan manner, the collaboration appears only to have deepened since President Trump's Administration took over the White House. By way of example only, last week President Trump dined with Fox's star host Sean Hannity, former Fox co-president Bill Shine and now former White House communications director Anthony Scaramucci. According to The Washington Post, a senior White House official said that the four men met to "discuss overhauling the West Wing staff and [Trump's] political strategy." [https://www.washingtonpost.com/news/post-politics/wp/2017/07/26/trump-dines-with-sean-hannity-ousted-fox-executive-bill-shine-and-scaramucci/?utm\\_term=.56065337c58a](https://www.washingtonpost.com/news/post-politics/wp/2017/07/26/trump-dines-with-sean-hannity-ousted-fox-executive-bill-shine-and-scaramucci/?utm_term=.56065337c58a).

28. As a result of the abhorrent conduct described herein, Mr. Wheeler brings claims for defamation *per se* against Defendants Twenty-First Century Fox, Inc. ("21st Century Fox"),

Fox News Network LLC (“Fox News”) (21st Century Fox and Fox News, together, “Fox”), Malia Zimmerman and Ed Butowsky.

29. Moreover, in addition to the above, Mr. Wheeler has been subjected to discrimination based upon his race, for which he brings claims under 42 U.S.C. § 1981.

### **JURISDICTION AND VENUE**

30. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as Mr. Wheeler is a resident of the state of Maryland and: (i) Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC are Delaware corporations with their principal place of business in New York County, New York; (ii) Defendant Malia Zimmerman resides in California; and (iii) Defendant Ed Butowsky resides in the state of Texas. Thus, there is complete diversity between Plaintiff and Defendants. In addition, pursuant to 28 U.S.C. § 1332(a), the amount in controversy, exclusive of costs and interest, is in excess of \$75,000.

31. Additionally, this action involves federal questions regarding the deprivation of Plaintiff’s rights under 42 U.S.C. § 1981 and thus subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1331.

32. This Court has supplemental subject matter jurisdiction over Plaintiff’s related state and local law claims pursuant to 28 U.S.C. § 1367(a).

33. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this district.

### **ADMINISTRATIVE PROCEDURES**

34. Simultaneous with this filing, Plaintiff will submit a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”). After receiving his right to sue,

Plaintiff will seek to amend this Complaint to add claims for Fox's violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII").

35. Plaintiff has complied with any and all other prerequisites to filing this action.

### **PARTIES**

36. Plaintiff Rod Wheeler is a resident of the state of Maryland. Mr. Wheeler is a contributor with Fox. At all relevant times, Mr. Wheeler has met and continued to meet the definition of an "employee" of Fox under all applicable statutes.

37. Defendant Twenty-First Century Fox, Inc. is duly organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business at 1211 Avenue of the Americas, New York, New York. At all relevant times, Twenty-First Century Fox, Inc. has met the definition of an "employer" of Mr. Wheeler under all applicable statutes.

38. Defendant Fox News Network LLC is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business at 1211 Avenue of the Americas, New York, New York. Fox News Network LLC is a wholly owned subsidiary of Twenty-First Century Fox, Inc. At all relevant times, Fox News Network LLC has met the definition of an "employer" of Mr. Wheeler under all applicable statutes.

39. Defendant Malia Zimmerman resides in Los Angeles, California. Defendant Zimmerman is an investigative reporter at Fox.

40. Defendant Ed Butowsky resides in Addison, Texas. Defendant Butowsky, the Managing Partner of Chapwood Investments, LLC, is a frequent contributor to Fox News and Fox Business.

## **FACTS**

### **I. ED BUTOWSKY**

37. Ed Butowsky is a Dallas-based financial advisor and managing partner of Chapwood Investments, LLC.

38. Butowsky has worked extensively with Fox in the past, appearing as a contributor on the Fox News Channel and Fox Business News. He has appeared on Varney and Co., Closing Bell, Your World with Neil Cavuto, America Live with Megyn Kelly, the Willis Report and America's News HQ, as well as TheBlaze TV with Glenn Beck. <http://www.edbutowsky.com/ed-butowsky/>.

39. Butowsky also has close ties to Steve Bannon, the White House Chief Strategist and former Chief Executive Officer of Breitbart news. Of Bannon, Butowsky has said "I consider him a friend and a very nice man." [https://www.buzzfeed.com/josephbernstein/the-man-behind-the-seth-rich-private-investigation-has-a?utm\\_term=.migyzVMXV#.yjdVOpb6p](https://www.buzzfeed.com/josephbernstein/the-man-behind-the-seth-rich-private-investigation-has-a?utm_term=.migyzVMXV#.yjdVOpb6p).

According to *Buzzfeed*, Butowsky and Bannon met through Breitbart, where Butowsky was a contributor. In addition, Bannon has interviewed Butowsky for Breitbart Radio. *Id.*

40. Leading up to the 2016 election, Butowsky was a vocal supporter of President Donald Trump and an outspoken critic of Hillary Clinton. <http://www.edbutowsky.com/vlog/i-voted-for/>; <https://www.youtube.com/watch?v=uSD2uJnbZCI>. Butowsky attended President Trump's inauguration and recently uploaded to his Facebook page a photograph of him in the White House briefing room. <http://www.nbcnews.com/politics/white-house/dnc-staffer-s-murder-draws-fresh-conspiracy-theories-n760186>.

### **II. MALIA ZIMMERMAN**

41. Malia Zimmerman is an investigative journalist at Fox News.

42. Prior to Fox, Zimmerman was the founder and President of the Hawaii Reporter. <http://www.civilbeat.org/2015/01/editors-desk-hawaii-reporters-malia-zimmerman-bids-aloha/>.

The Hawaii Reporter was a news website funded primarily by Watchdog.org, part of the conservative Franklin Center for Government and Public Integrity. *Id.* Zimmerman left the Hawaii Reporter in January 2015 to work for Fox News. *Id.*

### **III. DEMOCRATIC NATIONAL COMMITTEE HACKING SCANDAL AND MURDER OF SETH RICH**

43. News of the DNC hacking scandal broke on June 14, 2016 when the Washington Post reported that two groups working for the Russian government had accessed the DNC's computer network and was monitoring the DNC's emails and chat communications.

[https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0\\_story.html?hpid=hp\\_rhp-; http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html](https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html?hpid=hp_rhp-; http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html).

44. On July 22, 2016, WikiLeaks released nearly 20,000 emails from the accounts of seven DNC officials. The emails included controversial statements from former DNC Chairwoman, Debbie Wasserman Schultz, indicating bias on the part of the Democratic Party against Bernie Sanders and in favor of Hillary Clinton.

<http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html>.

45. On October 7, 2016, the Department of Homeland Security released a statement that said that the U.S. Intelligence Community ("USIC") was "confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations." <https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national>. Subsequently, in

December 2016, the CIA and FBI both determined that Russia hacked the DNC and that Russia sought to help President Donald Trump win the White House. [https://www.washingtonpost.com/graphics/2017/world/national-security/russia-hacking-timeline/?utm\\_term=.06444bce83f0](https://www.washingtonpost.com/graphics/2017/world/national-security/russia-hacking-timeline/?utm_term=.06444bce83f0).

46. Seth Rich, a 27-year old DNC Staffer, was murdered on July 10, 2016. Police determined that the murder occurred in the course of a botched robbery.

47. By the end of August 2016, a number of individuals theorized that Seth Rich – and not the Russians – was actually WikiLeaks’ source for the DNC emails published on July 22, 2016. <http://insider.foxnews.com/2016/08/25/assange-refers-murdered-dnc-staffer-alleged-potential-wikileaks-source>. On August 9, 2016, Julian Assange, the founder of WikiLeaks, made numerous cryptic statements regarding Seth Rich’s potential role as the source of the DNC emails to WikiLeaks. *Id.* These comments fueled a growing conspiracy theory on Twitter, and later on message boards on Reddit and 4chan that Seth Rich’s death was connected to the DNC. <http://www.latimes.com/business/hollywood/la-fi-ct-seth-rich-conspiracy-20170523-htmlstory.html>.

#### **IV. THE “CLOUD” OF THE RUSSIA INVESTIGATION**

48. On the morning of March 30, 2017, President Donald Trump called then FBI Director James Comey. During the call, the President described the Russia investigation as a cloud that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia and asked what could be done to lift the cloud. The President went on to say that if there were some “satellite” associates of his who did something wrong, it would be good to find that out, but that the President hadn’t done anything wrong and hoped that Director Comey would find a way to get it out that he was not being investigated. Director Comey was fired on May 9, 2017. <http://www.cnn.com/2017/06/07/politics/james-comey-memos-testimony/index.html>.

**V. BUTOWSKY RECRUITS MR. WHEELER TO INVESTIGATE THE MURDER OF SETH RICH**

49. Mr. Wheeler is a former Washington D.C. Police homicide detective and current private investigation consultant, crime analyst and Fox News contributor.

50. On February 23, 2017, Mr. Wheeler received a text message from Butowsky. The message – which was the first communication Mr. Wheeler ever had with Butowsky – read:

“I appreciate you reading this text message. We have many mutual friends including Adam Housley and many others from Fox News. Although I’m not a paid fox contributor, I do appear frequently on the News channel as well as the business channel. I watched your work for years and admire what you wearing [*sic*] on television. Behind the scenes I do a lot of work, (unpaid) helping to uncover certain stories, my biggest work was revealing most of what we know today about Benghazi. I’m looking for some assistance on something that happened in Washington I would appreciate if you would give me a call at 972.XXX.XXXX. Of all the people you have met in your line of work you have put me right next to those you view as the most confidential. I am extremely discreet. Is there a time I can give you a call this morning?”

51. Shortly thereafter, Mr. Wheeler called Butowsky and spoke with him for approximately 20 minutes. Butowsky stated that he was calling to enlist Mr. Wheeler to conduct an investigation into the Seth Rich murder. Butowsky explained that the Rich family was looking to engage an investigator (Mr. Wheeler), and that Butowsky had agreed to foot the bill. Mr. Wheeler informed Butowsky that although he did vaguely recall the details of the murder, it was Mr. Wheeler’s impression that the case was a botched robbery as the Washington D.C. police had previously reported. Mr. Wheeler informed Butowsky that he would be delighted to assist the Rich family and try to identify a suspect.

52. As it turned out, Butowsky and Zimmerman (who Mr. Wheeler later learned was working with Butowsky) were not simply Good Samaritans attempting to solve a murder. Rather, Butowsky and Zimmerman were interested in advancing a political agenda. Specifically,

it was their aim to have Mr. Wheeler's investigation confirm that: (i) Seth Rich was responsible for the leaks of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.

53. Butowsky and Zimmerman hoped that, if Mr. Wheeler could confirm that Seth Rich leaked the DNC emails to WikiLeaks, that would debunk reports the Russians were responsible for the DNC hacks. In turn, Butowsky and Zimmerman hoped that, if Mr. Wheeler could shift the blame for the DNC hacks from the Russians to Seth Rich, this would undermine reports of collusion between Russia and the Trump Administration.

54. Indeed, before Butowsky ever contacted Mr. Wheeler, he had already had a conversation on this topic with Seymour (Sy) Hersh. Mr. Hersh is an American investigative journalist who is notorious for using anonymous sources and is responsible for publishing a number of highly controversial stories.

55. During his conversation with Butowsky, Mr. Hersh claimed that he had received information from an "FBI report." Mr. Hersh had not seen the report himself, but explained: "I have somebody on the inside who will go and read a file for me. And I know this person is unbelievably accurate and careful. He's a very high level guy."

56. According to Mr. Hersh, his source told him that the FBI report states that, shortly after Seth Rich's murder, the D.C. police obtained a warrant to search his home. When they arrived at the home, the D.C. police found Seth Rich's computer, but were unable to access it. The computer was then provided to the D.C. police Cyber Unit, who also were unable to access the computer. At that point, the D.C. police contacted the Cyber Unit at the FBI's Washington D.C. field office. Again, according to the supposed FBI report, the Washington D.C. field office was able to get into the computer and found that in "late spring early summer [2016], [Seth Rich]



[made] contact with Wikileaks.” “They found what he had done. He had submitted a series of documents, of emails. Some juicy emails from the DNC.” Mr. Hersh told Butowsky that Seth Rich “offered a sample [to WikiLeaks][,] an extensive sample, you know I’m sure dozens, of emails, and said I want money.”

57. Among other things, during the conversation Butowsky said, “*the most important thing is this. Everyone, there’s so many people throughout Trump’s four years and maybe eight years are always going to fall back on the idea that he is not legitimate and the Russians got him elected. This [information about Seth Rich providing emails to WikiLeaks] changes all of that.*” He also said that with this information, “*[w]e solve the problem about Russians are the ones that gave the emails because that did not happen. I know that did not happen.*” Finally, Butowsky told Mr. Hersh, “You don’t have to go to the White House, but I have a great history of getting things, of getting things out there without people knowing that I’m the one who did it.” Mr. Hersh cautioned Butowsky that the information was not necessarily true, and that, even if true, it did not preclude the possibility that the Russians also hacked the DNC.

58. In addition, throughout March 2017, Butowsky exhibited a great deal of anxiety with Jack Burkman, a Republican lobbyist who claimed to have evidence that Seth Rich was killed by Russian operatives after Seth Rich discovered that the Russians had hacked the DNC. Obviously this narrative would contradict the story Butowsky wanted to write, and on March 2, 2017, Butowsky asked Zimmerman for Mr. Burkman’s contact information and stated, “*I need to shut him up.*” As Mr. Burkman began to gain additional notoriety, Butowsky’s anxiety grew. On March 23, 2017, immediately after the Rich family announced that Burkman was involved in setting up a go-fund-me page to assist in investigating the Seth Rich murder, Butowsky wrote to Mr. Wheeler, “I am having a huge anxiety over Burkman today.”

59. On Tuesday, February 28, 2017 Mr. Wheeler met with Butowsky at a restaurant on Capitol Hill in Washington D.C. When Mr. Wheeler arrived, he was surprised to find that Butowsky was accompanied by Zimmerman. Butowsky advised Mr. Wheeler that Zimmerman was an investigative journalist with Fox News, and had been investigating the death of Seth Rich for several months.

60. Following their lunch, Butowsky introduced Mr. Wheeler to the Rich family. However, before doing so, Butowsky warned Mr. Wheeler: “Make sure to play down Fox News, don’t mention you know Malia [Zimmerman].”

61. Over the course of the following weeks, Mr. Wheeler had multiple conversations with the Rich family regarding his retention. Mr. Wheeler spoke during this time with Seth’s father, Joel, Seth’s mother, Mary, and Seth’s brother, Aaron.

62. On March 14, 2017, the Rich family formally retained Mr. Wheeler to investigate the murder of Seth Rich. Butowsky wired \$5,000 to Mr. Wheeler as an up-front payment for the investigation. Rather than use his own bank account to send the wire, Butowsky used an account in the name of “GOOGIE, LP.”

## **VII. APRIL 2017**

66. On April 18, 2017, Butowsky sent a text message to Mr. Wheeler that stated: **“Are you in Washington DC area on Thursday afternoon? I am meeting Sean spicer and want you with me.”** Butowsky’s purpose in meeting with Mr. Spicer, President Trump’s former press secretary, was to keep him abreast of his investigation of the Seth Rich murder. Indeed, on April 19, 2017, Butowsky sent the following text message to Mr. Wheeler: **“Do you have summary done yet?[ ] Just bulletpointed. Just want to make sure we get point to Sean easily.”** Butowsky and Mr. Wheeler did in fact meet with Mr. Spicer on April 20, 2017 to keep him

informed about the Seth Rich murder investigation. Mr. Spicer was provided with a copy of Mr. Wheeler's investigative narrative and asked Butowsky and Mr. Wheeler to keep him abreast of any developments in the case. Upon information and belief, Butowsky did just that.

67. On April 19, the day before Butowsky and Mr. Wheeler met with Mr. Spicer, Mr. Wheeler met with Sarah Flores, the Director of Public Affairs at the Department of Justice ("DOJ"). Although Mr. Wheeler's meeting did not concern Seth Rich, *unbeknownst to Mr. Wheeler at the time, Butowsky had already reached out to talk with Ms. Flores about the Seth Rich murder "investigation."* Butowsky sent a text message to Mr. Wheeler that stated: "She [Ms. Flores] knows me well. Tell her I said hello. Let her know why I was calling her, Seth Rich. Ask her to keep it quiet because we don't know [ ] who the good or the bad people are anymore. But we know she's one of the really good ones."

68. Mr. Wheeler was able to secure an interview with Detective Della-Camera, with the Washington D.C. Metro Police Department on April 24, 2017. Detective Della-Camera is the lead homicide detective on the Seth Rich case. The night before the interview, Mr. Wheeler received an email from Butowsky that stated: "Della camera is either helping us or we will go after him as being part of the coverup."

69. Mr. Wheeler eventually met with Detective Della-Camera on April 25, 2017. Detective Della-Camera confirmed that he still believed that Seth Rich's murder was the result of a robbery gone bad. Detective Della-Camera also stated that he had nothing to say or to show that the shooting was related to emails or anything other than a street robbery. Detective Della-Camera also stated that he had no knowledge of any FBI involvement with the Seth Rich murder investigation. Finally, Detective Della-Camera stated that he did not have anything pointing the finger at the DNC other than the conspiracy theories.

**VIII. MAY 10, 2017 TO MAY 15, 2017**

70. On May 10, 2017 – the day after President Trump fired Director Comey – Butowsky and Zimmerman called Mr. Wheeler to inform him that they had supposedly secured a source at the FBI who confirmed that emails were sent between Seth Rich and WikiLeaks.

71. The following day, on May 11, 2017, Zimmerman sent Mr. Wheeler a draft of her story regarding the Seth Rich murder. The draft did not contain any quotes from Mr. Wheeler to the effect that Seth Rich had sent any emails to WikiLeaks, nor did the draft quote Mr. Wheeler as saying that the DNC, Democratic Party or Clintons were engaged in a cover-up.

72. On May 14, 2017, Butowsky – who at that point was pressuring Mr. Wheeler to complete his investigation – sent a text message to Mr. Wheeler that stated:

**“Not to add any more pressure but the president [Donald Trump] just read the article. He wants the article out immediately. It’s now all up to you. But don’t feel the pressure”**

73. This text message was sent less than one week after President Trump fired Director Comey. Upon information and belief, President Trump wanted Zimmerman’s article published to help lift the cloud of the Russia investigation.

74. Moreover, just before Butowsky sent the text message above, he left a voicemail for Mr. Wheeler in which he said, **“A couple minutes ago I got a note that we have the full, uh, attention of the White House, on this. And, tomorrow, let’s close this deal, whatever we’ve got to do. But you can feel free to say that the White House is onto this now.”**

75. Less than 24 hours later, on May 15, 2017, Zimmerman informed Mr. Wheeler that she would be publishing her story imminently.

76. Mr. Wheeler explained to Zimmerman he was traveling and could not review the drafts of the story she sent to him throughout the day. Zimmerman asked Mr. Wheeler for

certain additional quotes to add to her story, and Mr. Wheeler provided them in writing. Specifically, Zimmerman asked Mr. Wheeler for a quote regarding Debbie Wasserman Schultz and Donna Brazile, two former Chairs of the DNC who apparently called Detective Della-Camera to inquire as to why Mr. Wheeler was investigating the Seth Rich murder. Mr. Wheeler provided a quote – in writing – regarding Ms. Wasserman Schultz and Ms. Brazile. Mr. Wheeler followed up with a separate quote – also in writing – later that evening.

77. At no point in time did Mr. Wheeler say that his investigation revealed that Seth Rich sent any emails to WikiLeaks, nor did he say that the DNC, Democratic Party or Clintons were engaged in a cover-up. In fact, the only purported source saying that Seth Rich sent any emails to WikiLeaks was Butowsky and Zimmerman’s supposed source within the FBI. Mr. Wheeler had never even spoken with this individual, to the extent he or she even exists. In fact, when Mr. Wheeler was interviewed by a Fox affiliate on the evening of May 15, 2017, he made sure not to confirm as fact the proposition that Seth Rich sent emails to WikiLeaks, instead confirming only that a “source” (*i.e.*, Zimmerman’s and Butowsky’s alleged source) had information that could link Seth Rich to WikiLeaks.

78. Later in the evening on May 15, 2017, at 10:55 p.m. CDT, Butowsky sent an email regarding Zimmerman’s Seth Rich story to various Fox News producers and on air talent, including Steve Doocy, Gavin Hadden, Ainsley Earhardt and Brian Kilmeade. The email reads:

“The story is up or will be up very early tomorrow morning. Rod Wheeler is up and ready to give interviews. There’s more to come on the story but for now this is a massive story there’s [*sic*] going to be talked about for a long time. If you have any questions about the story or more information needed, call me at 972-XXX-XXXX. I’m actually the one who’s been putting this together but as you know I keep my name out of things because I have no credibility. **One of the big conclusions we need to draw from this is that the Russians did not hack our computer systems and**

*ste[all] emails and there was no collusion like trump with the Russians.*”

79. At approximately the same time, Butowsky sent a text message to Mr. Wheeler that reads, in part, “*[t]he narrative in the interviews you might use is that your and Malia’s work prove that the Russians didn’t hack into the DNC and steal the emails and impact our election.*”

**IX. MAY 16, 2017**

79. On the morning of May 16, 2017, Zimmerman published her article on the Seth Rich murder investigation. The article attributed two quotations to Mr. Wheeler relevant to this action.

80. First, the article falsely quoted Mr. Wheeler as stating: “My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks.” Mr. Wheeler did not provide this quote or make this statement.

81. Second, the article falsely quoted Mr. Wheeler as stating: “My investigation shows someone within the D.C. government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” “That is unfortunate. Seth Rich’s murder is unsolved as a result of that.” Again, Mr. Wheeler did not provide this quote or make this statement.

82. In falsely quoting Mr. Wheeler, Butowsky and Zimmerman attempted – through the publication of fake news – to accomplish what they had set out to do from the start: “solve the problem about Russians are the ones that gave the emails” and establish that “there was no collusion like trump with the Russians.”

83. Indeed, on the morning that the story was published, Butowsky sent the following text messages to Mr. Wheeler:

**“If you can, try to highlight this puts the Russian hacking story to rest”**

**“Just reflecting: we need to emphasize the FBI has a report that has been suppressed that shows that Seth rich did this. With Comey recently being fired this will gain a lot of attention and it’s true.”** Separately the DC police department has the same information and was told to drop the case.

**“The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead.”**

84. Very shortly after the article was published, Mr. Wheeler called Butowsky and demanded an explanation for the false statements about him in Zimmerman’s article. Butowsky stated that **the quotes were included because that is the way the President wanted the article,** referring to President Donald Trump. A few days later, Butowsky wrote to Zimmerman, **“I didn’t tell you yet but the federal government is involved at this moment, behind the scenes and believe your story.”**

85. Also on May 16, 2017, Mr. Wheeler called Zimmerman and confronted her about the use of false statements. Zimmerman told Mr. Wheeler that she would have the statements removed from the article. However, they were not removed and, later that day, Zimmerman told Mr. Wheeler that she had been instructed by her bosses at Fox News to leave the false quotes in the story.

86. Later that day, Mr. Wheeler informed various media outlets that he had been misquoted and made clear that he had not seen any emails between Seth Rich and WikiLeaks, nor had he ever even seen Seth Rich’s computer.

87. Following Mr. Wheeler’s disclosures and in advance of Mr. Wheeler’s planned appearance on the Sean Hannity Show, Zimmerman sent a text to Mr. Wheeler that stated, **“Reread the story we sent to you last night [with the false quotes] and stick to that script.”**

88. Even weeks later, Butowsky chastised Mr. Wheeler by stating that because Mr. Wheeler refused to confirm the substance of the Zimmerman article: “You have helped the left win this.” This further exposes Butowsky’s political motivations for assisting in the publication of the defamatory news article.

**X. ZIMMERMAN ADMITS THAT MR. WHEELER DID NOT PROVIDE THE QUOTES ATTRIBUTED TO HIM IN THE MAY 16, 2017 ARTICLE**

89. Following the publication of the May 16, 2017 article, the Rich family issued a statement condemning Zimmerman’s article and Mr. Wheeler. Zimmerman responded by sending an email to Joel Rich that reads, in part, “As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.” In sum, Zimmerman doubled down on the defamatory comments she published about Mr. Wheeler. Indeed, Joel Rich responded with an email accusing Mr. Wheeler of making false statements. According to Butowsky, Zimmerman’s bosses at Fox News reviewed the email she sent to Joel Rich and edited it before it was sent.

90. Mr. Wheeler confronted Zimmerman again about her false statements, as well as her false claim to Joel Rich that “much of the information” for her article came from Mr. Wheeler. Mr. Wheeler stated: “I kinda came across a response Malia that you had to Joel . . . the thing that I’m a little concerned about is that it says ‘as you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.’” Zimmerman responded, “that’s the email that Fox asked me to send him. They wrote it for me and they told me to send it to him.” Mr. Wheeler challenged her: “But that’s not accurate though because much, much of the information did not come from me.” In response, Zimmerman admitted: “Umm, well not not not . . . **Not the part about the emails. Not the part about, I mean about the connection to WikiLeaks**, but the rest of the quotes in the story did. A lot of the



quotes in the story did.” Later in the same conversation, Butowsky also conceded that the quotes were not made by Mr. Wheeler: “[O]ne day you’re going to win an award for having said those things you didn’t say.” Indeed, in another conversation, Mr. Butowsky read, from the article, to Mr. Wheeler: “my investigation up to this point shows that there was some degree of emails exchanged between Seth Rich and Wikileaks.” Butowsky then said, “Well I know that’s not true . . . I’ve never heard you say that.” “If I’m under oath, I would say I never heard him say that.”

91. Despite this, Zimmerman and Butowsky continued to push Mr. Wheeler to support Fox News and the Zimmerman story. Zimmerman and Butowsky, on behalf of Mr. Wheeler, drafted a response to the Rich family’s statements. Mr. Wheeler did not write or approve the response. Nevertheless, without Mr. Wheeler’s knowledge, Zimmerman sent the response to her Fox News colleagues and Butowsky posted the response on his Facebook page.

92. The response was posted to Butowsky’s Facebook page on or about May 20, 2017. Mr. Wheeler called Butowsky and asked him about the unauthorized posting of the fabricated response. Butowsky apologized and admitted that he did not have permission to post the response. Later in the same call, Butowsky told Mr. Wheeler that the situation would be a “nightmare that ends, and holy shit look how many phone calls I’m getting congratulating me and thanking me for putting an end to the Russian bullshit. [ ] That’s where this is gonna end up.” Again, Butowsky revealed his political motivations for assisting in the publication of the defamatory news article.

#### **XI. MR. WHEELER REPORTS ZIMMERMAN AND BUTOWSKY’S CONDUCT TO DIANNE BRANDI AND JAY WALLACE**

93. On May 23, 2017, Fox finally retracted Zimmerman’s article and issued the following, “the May 16 story was not initially subjected to the high degree of editorial scrutiny

we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed,” the statement said. “We will continue to investigate this story and will provide updates as warranted.”

94. However, Fox did not clear Mr. Wheeler’s name and never admitted that Zimmerman had misquoted him. As such, Mr. Wheeler requested and attended a meeting with Ms. Brandi and Jay Wallace, Fox News’s Executive Vice President of News and Editorial. Mr. Wheeler explained to Ms. Brandi and Mr. Wallace that he had not provided Zimmerman with the quotations she used in her article. He also informed Ms. Brandi and Mr. Wallace that Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding WikiLeaks that she attributed to him in the article. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him.

## **XII. FOX EXECUTIVES DISINGENUOUSLY TESTIFY TO U.K. REGULATORS THAT FOX IS “FIT AND PROPER” TO LEAD SKY PLC**

95. At the same time that Butowsky enticed Mr. Wheeler into investigating the death of Seth Rich, and while Zimmerman was writing the article that Fox approved and published on May 16, 2017, Fox Executives were testifying in London before British regulators to help secure Fox’s bid to control Sky. Sky, the British media conglomerate, delivers internet, television and mobile services to more than 22 million customers in the U.K., Ireland, Germany, Austria and Italy. Fox, which holds a 39% stake in Sky, announced in December 2016 its bid to purchase the remaining shares for \$11.1 billion.

96. As part of the U.K.’s takeover rules, government officials referred Fox’s takeover bid to Ofcom, the communications regulation agency tasked with investigating Fox and issuing a report as to whether Fox had a “commitment to broadcasting standards.” As part of the

regulators' inquiry, attention was focused on whether Fox was "fit and proper" to exert such enormous influence over U.K.'s news and media industries.

97. In an effort to convince regulators that Fox was in compliance with the rules, senior executives from Fox participated in meetings with Ofcom investigators and provided testimony under oath. Specifically, Fox Executives, including Zweifach, met with regulators in London on March 27, 2017, April 11, 2017, May 11, 2017 and May 30, 2017, to alleviate concerns regarding Fox's ability to influence the media.

98. Despite public claims that Fox Executives were completely transparent during the Ofcom investigation, upon information and belief, Fox Executives failed to disclose the facts regarding Fox's role in the effort to influence American politics by disseminating Zimmerman's story.

99. Clearly, senior level producers at Fox, as well as Ms. Brandi and Mr. Wallace, were aware of the fact that Zimmerman's article, while unsubstantiated, provided support to the Trump Administration's desire to divert attention from the Russian email hacking scandal.

100. It is hard to imagine a clearer example of Fox's willingness and determination to influence the news agenda and the political process than a situation where it knowingly generates and publishes fake news to further its own political agenda.

101. Such devious scheming is precisely why British regulators have yet to provide a green light to Fox for the Sky takeover bid, and why many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.

102. Upon information and belief, Fox owes a continuing duty to report any relevant information to U.K. regulators that impacts the analysis of whether the Company is "fit and proper" to own Sky.

**XIII. BUTOWSKY PLANS TO EXTORT SY HERSH IN AN EFFORT TO “SAVE”  
THE MAY 16, 2017 STORY**

103. During a May 19, 2017 telephone call between Butowsky and Mr. Wheeler, Butowsky revealed his plan to extort Sy Hersh in an effort to save the May 16, 2017 Seth Rich story. Specifically, Butowsky stated:

“What I’m really good at is going on the offensive, okay. Once we assess the situation, so I’ve got a friend of mine from high school that does a lot of crises management stuff but we both think a lot alike. I sent him the Sy Hersh redacted where it’s just his voice. He is going to record five seconds of Sy’s voice. He’s emailing Sy. That email is going to contain that five seconds and, he’s going to say, you have three hours to write back who at the FBI you spoke to, with his name, that read you the Seth Rich report. If you don’t give us that in three hours, a full recording of everything we have will be at every news agency tonight with your name and phone number on it. If you give it to us, you will never hear from us again.”

Butowsky then claimed that he had Mr. Hersh’s “balls in a noose.” Once the name of the supposed FBI agent was revealed, Butowsky planned to “publish it every fucking place and say, hey guys, guess what, this man has the report, go call him.”

**XIV. MR. WHEELER’S REPUTATION IS DESTROYED BY DEFENDANTS’  
DECISION TO DEFAME HIM**

104. Following the publication of Zimmerman’s article, and precisely because of the defamatory statements therein, Mr. Wheeler’s reputation as an objective, credible and intelligent investigator with integrity was completely destroyed. Among many, many comments evidencing this fact are the following:

- The New York Times reported that Mr. Wheeler has given “shifting and contradictory accounts” regarding Seth Rich’s connection with WikiLeaks. <https://www.nytimes.com/2017/05/17/us/seth-rich-dnc-wikileaks.html>.

- The New York Times reported that “The Rich family regrets hiring Mr. Wheeler and has objected to his many public comments” and that “Aaron Rich, Mr. Rich’s brother, said in an email Wednesday that Mr. Wheeler has ‘Discredited himself as an objective investigator’ and had lost the confidence of the family. He said that the politicization of his brother’s death had been ‘painful’ and ‘debilitating.’”  
<https://www.nytimes.com/2017/05/17/us/seth-rich-dnc-wikileaks.html>.
- GQ reported: “Here's how the story unraveled. Wheeler, it turns out, is a verifiable dipshit.” <http://www.gq.com/story/fox-news-seth-rich-conspiracy-theory>.
- MSNBC referred to Mr. Wheeler as a “blabbing detective.”  
<http://www.nbcnews.com/politics/justice-department/slain-dnc-staffer-s-family-orders-blabbing-detective-cease-desist-n762211>.
- The Washington Post reported that the Rich family said that Mr. Wheeler had “peddled politicized conspiracy theories.”  
[https://www.washingtonpost.com/local/public-safety/family-of-slain-dnc-staffer-fights-back-against-conspiracy-theories-with-cease-and-desist-letter/2017/05/20/6da279c2-3d6f-11e7-8854-21f359183e8c\\_story.html?utm\\_term=.36a01d101420](https://www.washingtonpost.com/local/public-safety/family-of-slain-dnc-staffer-fights-back-against-conspiracy-theories-with-cease-and-desist-letter/2017/05/20/6da279c2-3d6f-11e7-8854-21f359183e8c_story.html?utm_term=.36a01d101420).

105. Moreover, the fact that Mr. Wheeler had to correct the record resulted in many media outlets and commentators declaring that Mr. Wheeler had backtracked on his story and statements about Seth Rich, destroying his credibility. Of course, Mr. Wheeler only had to backtrack on his purported statements because he never made the statements to begin with.

#### **XV. MR. WHEELER IS FURTHER DEFAMED**

106. On June 23, 2017, Mr. Wheeler put Defendants on notice of his decision to seek legal counsel and assert claims against Defendants.

107. On June 26, 2017, Butowsky tweeted: “Fox News story was pulled b/c Rod Wheeler said [he] didn’t say a quote . . . How much did DNC pay him?” This statement was false.

108. On the same day, Butowsky also tweeted: “This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn’t say ???” This statement was false.

**XVI. FOX NEWS DISCRIMINATES AGAINST MR. WHEELER BASED ON RACE**

109. Mr. Wheeler, who is Black, was hired by Fox as a contributor in 2005. Mr. Wheeler is not a full time employee and, as such, is paid a set amount for each appearance he makes on Fox programming rather than a set salary. Further, Mr. Wheeler is not provided benefits by Fox.

110. Throughout his career with Fox, Mr. Wheeler’s white colleagues with comparable or inferior skills, expertise and experience have received more air time, made more appearances and been hired into full time positions. As a result, these white colleagues make more money, receive more notoriety and, in many cases, receive valuable benefits.

111. Examples include Bo Dietel, Mark Furman, Steve Rogers, Pat Bronson and Griff Jenkins.

112. Meanwhile, Mr. Wheeler’s career has remained stagnant for 12 years despite his repeated requests to be hired full time. As recently as April 2017, Mr. Wheeler made the same request to Ms. Brandi. As usual, she responded by saying she would “check into this and get back to you,” but has failed to do so.

113. Fox’s marginalization of Mr. Wheeler is simply part of its systemic pattern and practice of discriminating against people of color. Indeed, since, March 2017, no fewer than 16 Fox News employees of color have sued Fox News for race discrimination and/or filed charges of discrimination with the EEOC.

**FIRST CAUSE OF ACTION**

**(Defamation *per se*)**

***Against Twenty-First Century Fox, Inc., Fox News Network LLC,  
Malia Zimmerman and Ed Butowsky***

114. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

115. Fox, Zimmerman and Butowsky issued, approved, endorsed and/or ratified defamatory statements about Plaintiff; specifically:

- “‘My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,’ said Wheeler.” This statement was made on May 16, 2017.
- “‘My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,’ Wheeler said. ‘That is unfortunate. Seth Rich’s murder is unsolved as a result of that.’” This statement was made on May 16, 2017.

116. Fox, Zimmerman and Butowsky knew that the statements attributed to Mr. Wheeler were not said by him and/or published the statements with reckless disregard for their truth.

117. Further, on or about May 16, 2017, Zimmerman told Joel Rich: “As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.” This statement is false.

118. Further, on June 26, 2017, Butowsky tweeted: “Fox News story was pulled b/c Rod Wheeler said [he] didn’t say a quote . . . How much did DNC pay him?” This statement is false.

119. On the same day, Butowsky tweeted: “This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn’t say ???” This statement is false.

120. Plaintiff has suffered harm as a result of the defamatory statements, including, but not limited to, reputational harm, emotional distress and mental anguish, and the statement was defamatory *per se*. As such, Plaintiff is entitled to monetary and punitive damages.

**SECOND CAUSE OF ACTION**  
**(Race, Color and Ethnicity Discrimination in Violation of 42 U.S.C. § 1981)**  
***Against Twenty-First Century Fox, Inc. and Fox News Network LLC***

121. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

122. Fox has discriminated against Plaintiff on the basis of his race, color, ethnicity and/or national origin in violation of 42 U.S.C. § 1981 by, *inter alia*, denying Plaintiff equal terms and conditions of employment available to similarly-situated White employees, including, but not limited to, refusing to hire Plaintiff to a full time position because of his race, color, ethnicity and/or national origin and paying Plaintiff less than similarly-situated White employees because of his race, color, ethnicity and/or national origin.

123. As a direct and proximate result of Fox's unlawful discriminatory conduct in violation of the 42 U.S.C. § 1981, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which he is entitled to an award of damages.

124. As a direct and proximate result of Fox's unlawful discriminatory conduct in violation of the 42 U.S.C. § 1981, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, for which he is entitled to an award of damages.

125. Fox's unlawful discriminatory actions constitute malicious, willful and wanton violations of the 42 U.S.C. § 1981, for which Plaintiff is entitled to an award of punitive damages.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

A. An injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the defamation and discriminatory policies and practices complained of herein;

B. An order directing Defendants to place Plaintiff in the position he would have occupied but for Defendants' defamatory and discriminatory conduct, and to take such affirmative action as is necessary to ensure that the effects of this unlawful conduct are eliminated and do not continue to affect Plaintiff;

C. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States, as well as the State and City of New York;

D. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for all monetary and/or economic damages;

E. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for his mental anguish and emotional distress, emotional pain and suffering and any other physical and mental injuries;

F. An award of damages to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for harm to his professional and personal reputation and loss of career fulfillment and earnings;

- G. An award of punitive damages;
- H. An award of costs that Plaintiff has incurred in this action, as well as reasonable attorneys' fees to the fullest extent permitted by law; and
- I. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: August 1, 2017  
New York, New York

Respectfully submitted,

**WIGDOR LLP**

By: 

Douglas H. Wigdor  
Jeanne M. Christensen  
Michael J. Willemin

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*Counsel for Plaintiff*

# Exhibit B

## CRIME

## Seth Rich, slain DNC staffer, had contact with WikiLeaks, say multiple sources



By **Malia Zimmerman**  
Published May 16, 2017  
Fox News



The Democratic National Committee staffer who was gunned down on July 10 on a Washington, D.C., street just steps from his home had leaked thousands of internal emails to WikiLeaks, law enforcement sources told Fox News.

A federal investigator who reviewed an FBI forensic report -- generated within 96 hours after DNC staffer Seth Rich's murder -- detailing the contents Rich's computer said he made contact with WikiLeaks through Gavin MacFadyen, a now-deceased American investigative reporter, documentary filmmaker, and director of WikiLeaks who was living in London at the time.

*“My investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks.”*

*- Rod Wheeler, former DC homicide investigator*

"I have seen and read the emails between Seth Rich and WikiLeaks," the federal investigator told Fox News, confirming the MacFadyen connection. He said the emails are in possession of the FBI, while the stalled case is in the hands of the Washington Police Department.

The revelation is consistent with the findings of Rod Wheeler, a former DC homicide detective and Fox News contributor and whose private investigation firm was hired by Rich's family to probe the case. Rich was shot from behind in the wee hours, but was not robbed.

"My investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks," Wheeler said. "I do believe that the answers to who murdered Seth Rich sits on his computer on a shelf at the DC police or FBI headquarters."

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### Related Image



Rich was fiercely patriotic, say family members. (Rich family)

The federal investigator, who requested anonymity, said 44,053 emails and 17,761 attachments between Democratic National Committee leaders, spanning from January 2015 through late May 2016, were transferred from Rich to MacFadyen before May 21.

On July 22, just 12 days after Rich was killed, WikiLeaks published internal DNC emails that appeared to show top party officials conspired to stop Sen. Bernie Sanders of Vermont from becoming the party's presidential nominee. That controversy resulted in Debbie Wasserman Schultz resigning as DNC chairperson. A number of Sanders supporters refused to back party nominee Hillary Clinton, and some subsequently formed groups to work against Clinton and the party.

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### Related Image



Seth Rich, shown here with his mother, was idealistic and wanted to change the world, his father said. (Rich family)

WikiLeaks leader Julian Assange has stopped short of identifying Rich as the source of the emails, but has taken a keen interest in the case, and has not denied working with Rich.

“WikiLeaks has decided to issue a US\$20k reward for information leading to conviction for the murder of DNC staffer Seth Rich,” the organization announced.

Washington’s Metropolitan Police Department has no suspects and no substantial leads as to who the killer or killers may be, sources close to the investigation said. Metropolitan Police, including the police chief, have refused to discuss the case, despite requests from Fox News dating back 10 months.

The FBI’s national office declined to comment, but sources said the bureau provided cyber expertise to examine Rich’s computer.

Wheeler believes powerful forces are preventing the case from a thorough investigation.

“My investigation shows someone within the D.C. government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” Wheeler told Fox News. “That is unfortunate. Seth Rich’s murder is unsolved as a result of that.”

The botched robbery theory, which police have pursued for nearly a year, isn’t panning out, Wheeler said. Two assailants caught on a grainy video tape from a camera posted outside a grocery mart, shot Rich twice in his back, but did not take his wallet, cell phone, keys, watch or necklace worth about \$2,000.

Police should consider all angles, Wheeler said, especially in light of Assange’s statements to a Dutch television reporter who asked about Rich.

“I am suggesting,” Assange told the Dutch reporter, “that our sources take risks, and they, they become concerned to see things occurring like that.”

On Twitter, WikiLeaks announced the reward but said Assange’s statement “should not be taken to imply that Seth Rich was a source for WikiLeaks or to imply that his murder is connected to our publications” because WikiLeaks has a policy not to release the names of its sources, even after their death.

In subsequent appearances on Fox News Channel, Assange confirmed, "We're interested in anything that might be a threat to alleged WikiLeaks sources."

Assange has not returned a series of recent emails from Fox News about Rich. MacFadyen, who was considered a mentor by Assange, died of lung cancer on Oct. 22 at age 76.

D.C. police have announced a \$25,000 reward for information leading to the conviction of Rich's killer. Republican lobbyist Jack Burkman has offered a separate \$130,000 reward.

Rich had been at Lou's City Bar a couple of miles from his home until about 1:15 a.m. He walked home, calling several people along the way. He called his father, Joel Rich, who he missed because he had gone to sleep. He talked with a fraternity brother and his girlfriend, Kelsey Mulka.

Around 4:17 a.m., Rich was about a block from his home when Mulka, still on the phone with him, heard voices in the background. Rich reassured her that he was steps away from being at his front door and hung up.

Two minutes later, Rich was shot twice. Police were on the scene within three minutes. Rich sustained bruising on his hands and face. He remained conscious, but died at a nearby hospital less than two hours later.

Police detectives will not say whether Rich provided them with any clues about the identity of his attackers or their motivation, Wheeler said. However, Wheeler believes Rich could have provided information prior to his death of who was responsible for carrying out his murder.

Police also have refused to release security footage from a market on the corner of the crosswalk where Rich was killed. The footage, sources told Fox News, shows two people following Rich across the tiny crosswalk just moments before he was attacked. The camera captured grainy footage of the assailants' legs and Rich as he fell backward into the street after being shot.

Wheeler said normally police would release the footage to the media. The family also should be privy to the entire case jacket, with all the details of the case, unless they are considered suspects, Wheeler said. However, to date, the family has not received a copy of the tape or most of the details related to their son's murder case. The homicide case remains open, according to a spokesperson for D.C. police.

Rich's father, Joel Rich, could not be reached for comment, but [told Fox News in January](#) that he didn't believe his son would leak the emails. However, he said above all, his son "wanted to make a difference in the world."

*Malia Zimmerman is an award-winning investigative reporter focusing on crime, homeland security, illegal immigration crime, terrorism and political corruption. Follow her on twitter at @MaliaZimmerman*

Site Index



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# Exhibit C

JUL 31 2006  
CHAMBERS OF  
WILLIAM H. PAULEY

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 8/8/06

SO ORDERED:  
*William H. Pauley III*  
WILLIAM H. PAULEY III U.S.D.J.  
8/4/06

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, :  
  
Plaintiff, :  
  
v. :  
  
FOX NEWS NETWORK, LLC, :  
  
Defendant. :  
-----X

ECF CASE  
  
05-CV-9419 (WHP/RLE)

**CONSENT DECREE**

The parties to this Consent Decree are the Equal Employment Opportunity Commission ("EEOC") and Fox News Network, LLC ("Defendant").

WHEREAS, EEOC brought this action on or about November 7, 2005 pursuant to Title VII of the Civil Rights Act of 1964, as amended (Title VII) ("the Action"). EEOC alleged that Defendant discriminated against the Charging Party, Kim Weiler, and a class of similarly-situated women by subjecting them to harassment, a hostile environment and disparate treatment because of their sex, female. EEOC also alleged that Defendant retaliated against Weiler for engaging in protected activity in opposing the discrimination;

WHEREAS, Defendant denied each of the claims and allegations in the EEOC Action;

WHEREAS, the parties hereto desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the parties and their successors or assigns. The parties agree that it is in their mutual interest to resolve this matter fully without the costs, uncertainty, expense and delay of litigation; and

The parties agree that this Decree may be entered into without Findings of Fact and

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Conclusions of Law being made and entered by the Court. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all parties to this Consent Decree and approved or ordered by the Court.

NOW THEREFORE, in consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Decree resolves any and all issues, claims and allegations that were raised by EEOC Charge Number 160-2004-02728 and the Action. This Decree in no way affects EEOC's right to process any future charges that may be filed against Defendant and to commence civil actions on any such charges as EEOC sees fit.
2. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.
3. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon breach of any of the terms of this Decree by any other party. Breach of any term of this Decree should be deemed to be a substantive breach of this Decree. Nothing in this Decree shall be construed to preclude a party from bringing proceedings to enforce this Decree in the event that the opposing party fails to perform any of the promises and representations contained herein.
4. Defendant and its managers, officers, agents, successors, or assigns shall not discriminate against or harass any individual because of the individual's sex, or engage in retaliation toward any individual for asserting his or her rights under Title VII. Defendant and its managers, officers and agents shall not retaliate against any individual who has participated in this matter in some way, including giving testimony in this matter. This includes, but is

- 
- not limited to, Kim Weiler, Jacqueline Oliver, Kathryn Bougadis and Stephanie Lowenthal.
5. Defendant shall pay the total sum of \$225,000 to Kim Weiler, Jacqueline Oliver, Kathryn Bougadis, Stephanie Lowenthal (collectively, "Claimants"). EEOC shall have sole discretion in the distribution of this sum among the Claimants.
  6. Within ten (10) calendar days of entry of the Consent Decree, EEOC shall inform Defendant in writing of the amount to be distributed to each Claimant, and whether each amount represents backpay or compensatory damages, and shall provide Defendant with each such Claimant's address and Social Security Number. Within ten (10) business days after Defendant's receipt of this information, Defendant shall send to each Claimant a check (or checks, if applicable) in the amount specified by EEOC. A copy of each check shall be forwarded to Raechel L. Adams, Esq., Equal Employment Opportunity Commission, 33 Whitehall Street, 5<sup>th</sup> Floor, New York, NY 10004, immediately upon issuance of the check.
  7. In connection with each check for backpay, Defendant shall issue to the Claimant an IRS Form W2, and in connection with each check for compensatory damages, Defendant shall issue to the Claimant an IRS Form 1099. All Claimants shall be responsible for any taxes owed by them with respect to these payments.
  8. No later than seven (7) business days from the date of entry of this Decree, Defendant agrees to post EEOC's poster in places visually accessible to employees and applicants in Defendant's principal New York office.
  9. No later than seven (7) business days from the date of entry of this Decree, Defendant agrees to post a remedial Notice pursuant to the Consent Decree, attached hereto as Exhibit A, on all bulletin boards visually accessible to employees and applicants, where notices to employees

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are regularly posted.

10. Beginning in January 2007, Defendant will provide four (4) hours of training in federal laws prohibiting discrimination in employment for all current employees. The training will be provided by Rossein Associates. The agenda for the training, which has been reviewed and approved by EEOC, is attached hereto as Exhibit B. The training will be repeated beginning in July of 2008. Each training cycle will be completed within twelve (12) months of commencement.
11. Beginning in January 2007, Defendant will provide four (4) hours of training in federal laws prohibiting discrimination in employment for all current management/supervisory employees. The training will be provided by Rossein Associates. The agenda for the training, which has been reviewed and approved by EEOC, is attached hereto as Exhibit C, with a module specifically designed for management and supervisory employees. The training will be repeated beginning in July of 2008. Each training cycle will be completed within twelve (12) months of commencement.
12. In addition to participating in the management/supervisory training described in Paragraph 11 above, Defendant will provide an individualized training session for the vice president/supervisor of the Advertising and Promotions Department in May 2007. The training will be provided by Rossein Associates. This training will be repeated in November 2008.
13. Defendant will forward to EEOC a copy of an attendance sheet for each training session within thirty (30) days of the completion of each training session.
14. Defendant agrees to maintain the anti-discrimination policy attached hereto as Exhibit D, which includes an anti-harassment policy, an anti-retaliation policy and a complaint procedure. The anti-discrimination policy has been reviewed and approved by EEOC.

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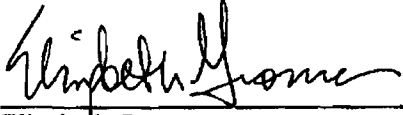

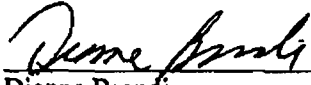
Defendant further agrees to distribute the approved anti-discrimination policy to all employees within thirty (30) days of the entry of the Consent Decree and at the time the employees are trained pursuant to Paragraphs 10-12, above.

15. Each party shall bear its own attorney fees and costs incurred in this action.
16. This Decree constitutes the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.
17. This Decree will remain in effect until December 31, 2009.
18. Defendant agrees to make available for inspection and copying any records reasonably related to the enforcement of this Decree, upon seven (7) business days written notice by EEOC, which notice shall specify those records that EEOC seeks to inspect.

SO ORDERED, ADJUDGED AND DECREED this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
U.S. District Judge

APPROVED IN FORM AND CONTENT:

<p>FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</p> <p> Elizabeth Grossman Regional Attorney</p> <p>Judy Keenan Acting Supervisory Trial Attorney</p> <p>Raechel L. Adams Senior Trial Attorney</p> <p>33 Whitehall Street 5<sup>th</sup> Floor New York, NY 10004 (212) 336-3707 Fax (212) 336-3623</p>	<p>FOR FOX NEWS NETWORK, LLC</p> <p> Blythe E. Lovinger Kasowitz, Benson, Torres &amp; Friedman LLP 1633 Broadway New York, NY 10019-6799 (212) 506-1707 Fax (212) 506-1800</p> <p> Dianne Brandt General Counsel Fox News Network, LLC</p>
--	---

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_

**ROSSEIN ASSOCIATES  
BUILDING RESPECT IN THE WORKPLACE**

**Training Outline for Providing Four Hours of Training  
For all Employees in Federal Laws Prohibiting Discrimination and Harassment**

- I. INTRODUCTION and OVERVIEW
  
  - II. WHY EMPLOYERS MUST BE PROACTIVE  
IN PREVENTING HARASSMENT AND DISCRIMINATION
    - A. Liability
    - B. Collegiality
    - C. Productivity
    - D. Disruption
  
  - III. WHAT IS UNLAWFUL HARASSMENT AND DISCRIMINATION?  
Discussion of scenarios (*see e.g.* Training Module)
    - A. Types of conduct that create a hostile environment
    - B. Types of conduct that constitutes unlawful discrimination
    - C. Range of responses available to both the victim and managers
    - D. Ways to address problems informally and formally
  
  - IV. DEFINITION OF HARASSMENT
    - A. Adverse Tangible Employment Action (*quid pro quo*)
    - B. Hostile or Abusive Environment
      - 1. Unwelcome
      - 2. Pervasiveness or Severity
-



- 
- 3. Alteration of working conditions
  - 4. Objective/Subjective
  - C. Supreme Court Decisions
  - D. EEOC Guidelines on Harassment
  - E. Confidentiality
  - F. Corrective Actions
  - V. Federal Laws Prohibiting Discrimination Because of Sex, Race, National Origin, Color, Religion, Age and Disability
    - A. Different Treatment
    - B. Employment actions based on job related factor
  - VI. Retaliation
    - A. What is Retaliation—The Law
    - B. Review of Supreme Court Decision
    - C. Examples of Retaliation
  - VII. Fox News Network's Equal Employment Opportunity and Unlawful Harassment Policy
    - A. Review Policy
    - B. Review Complaint Mechanism
  - VIII. Conclusion
    - A. Employees', Managers' and Supervisors' Responsibilities
    - B. The Benefits of Promoting Respect in the Workplace

**ROSSEIN ASSOCIATES  
BUILDING RESPECT IN THE WORKPLACE**

**Training Outline for Providing Four Hours of Training  
For Managers and Supervisory Employees in Discrimination and Harassment Law**

- I. INTRODUCTION and OVERVIEW
  
- II. WHY EMPLOYERS MUST BE PROACTIVE  
IN PREVENTING HARASSMENT AND DISCRIMINATION
  - A. Liability
  - B. Collegiality
  - C. Productivity
  - D. Disruption
  
- III. WHAT IS UNLAWFUL HARASSMENT AND DISCRIMINATION?  
Discussion of scenarios (see, e.g. training module for managers)
  - A. Review of types of conduct that create a hostile environment
  - B. Types of conduct that constitutes unlawful discrimination
  - C. Range of responses available to both the victim and managers
  - D. Ways to address problems informally and formally
  
- IV. DEFINITION OF HARASSMENT (Review)
  - A. Adverse Tangible Employment Action (quid pro quo)
  - B. Hostile or Abusive Environment
    - 1. Unwelcome
    - 2. Pervasiveness or Severity
    - 3. Alteration of working conditions

- 
- 4. Objective/Subjective
    - C. Supreme Court Decisions
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**Fox News Network, LLC**

**Equal Employment Opportunity and Unlawful Harassment Policy**

**Equal Employment Opportunity Statement**

Fox News Channel maintains a strong policy of equal employment opportunity for all employees and applicants for employment. The Company hires, trains, promotes and compensates each employee based upon job-related factors such as the individual's ability, work quality, attitude, competence and potential, as well as the Company's operational needs, without regard for race, color, religion, sex, sexual orientation, national origin, citizenship, age, marital status or disability, as well as all other classifications protected by applicable laws (collectively, the "Protected Classifications").

The Company's equal employment opportunity philosophy applies to all aspects of employment with the Company, including, but not limited to, recruiting, hiring, training, transfer, promotion, employee benefits and compensation, termination, educational assistance, leave of absence, and social and recreational activities.

**Fair Work Environment**

It is the Company's policy to promote a fair and collegial working environment for all our employees. In keeping with this policy, sexual, racial, religious, ethnic, sexual orientation, age, national origin or other harassment of any employee by anyone is contrary to Company policy and will not be condoned. The Company will endeavor to keep the work place free of any conduct that creates an intimidating, hostile or abusive work environment.

**Accommodation For Disabilities**

The Company endeavors to provide equal employment opportunities to otherwise qualified individuals with disabilities. Opportunities include, to the extent practical, providing reasonable accommodations.

In general, it is an employee's responsibility to notify the Company of the need for an accommodation. If an employee communicates to his or her supervisor that an accommodation is required, the supervisor may ask the employee for input about the type of accommodation necessary, or the functional limitations caused by the disability.

## **Unlawful Harassment**

The Company opposes harassment of others on the basis of sex, sexual orientation, age, race or any other Protected Classification. Harassment includes making derogatory remarks about an employee's characteristics, using negative epithets, making "jokes" about ethnic or other groups, and other verbal or physical behavior.

All employees are expected to cooperate in maintaining this work environment. Any forms of unlawful harassment, whether verbal or physical, will not be tolerated by the Company at any level.

While all forms of harassment are prohibited, be they based on one's race or ethnicity, the Company wishes to emphasize the special problems of sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when;

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with the affected individual's work performance or creating a intimidating, hostile or offensive work environment.

Sexual harassment is prohibited whether directed toward men or women, and regardless of whether the employee accepts or rejects the advance.

The Company does not wish to interfere with the personal lives of its staff. However, conduct of a sexual nature directed toward Company employees that is not welcome and creates a hostile or abusive work environment can be unlawful sexual harassment, whether committed by supervisory or non-supervisory personnel. Examples of conduct that could constitute sexual harassment include:

- Sexual touching, advances, or propositions;
- Verbal abuse, epithets, derogatory statements or slurs;
- Graphic or suggestive comments about an individual's dress or body;
- Sexually degrading words to describe an individual; and
- The display in the workplace of sexually suggestive objects or pictures, including nude photographs.

The Company policy also applies to sexually improper conduct toward the Company's staff or clients, customers or other non-employees. If an employee informs the Company that he or she has been subject to sexual or other harassment in the workplace by a non-employee, that individual will be informed of the Company's policy and appropriate corrective action and preventative steps will be taken.

Please keep in mind that each of the concepts described in the preceding discussion of "sexual harassment" applies with equal force to all other types of prohibited harassment.

### **Discrimination And Harassment Complaints**

The Company respects the right of each employee who complains about illegal discrimination of any kind, including sexual or other workplace harassment, or who provides information in connection with any such complaint. Retaliation against any employee for engaging in these protected activities is contrary to Company policy and will not be condoned. An employee who believes that he or she has experienced illegal discrimination or retaliation should report that immediately to the Human Resources Department or, if that is problematic, to the Company's Senior Deputy General Counsel, or other appropriate Company representative.

### **Your Supervisor**

The Company is dedicated to having professional supervisors at all levels that can serve as sensitive and informed resources for their employees. Your supervisor should be your primary resource for information about your job, current developments and important changes within the Company. He/she should also be the person most capable of understanding any problems or issues you may have, and discussions and resolution of these matters should go through your supervisor first.

Your supervisor is also charged with reviewing your performance, counseling you, and seeing that you receive the direction, training and assistance necessary to be successful on the job. Your supervisor will work with you and help you to develop and achieve your career goals.

In exchange, your supervisor needs to hear from you. You should feel free to openly share with your supervisor your questions or concerns regarding any phase of your work or employment, and your ideas and suggestions for making improvements.

# Exhibit D





lewd behavior.<sup>1</sup> To date, the stories of more than 25 women, whose professional interactions with Ailes spanned two decades, shockingly reveal that Ailes regularly used his position of power to threaten and control women in junior positions through sexual conduct, including, but by no means limited to:

- Laurie Luhn, a former FNC booker who alleged, *inter alia*, that for more than 20 years she was his sexual toy who he black-mailed with explicit photos and “psychologically tortured,” including by forcing Luhn to recruit young staffers for him and told her, “You are going to find me ‘Roger’s Angels.’ You’re going to find me whores.”
- Kellie Boyle, a communications consultant, alleges that Ailes retaliated against her after she rebuffed his sexual advances, and that Ailes told her, “You know if you want to play with the big boys, you have to lay with the big boys.”
- Rudi Bakhtiar, a former FNC correspondent who says that she was fired for complaining about sexual harassment, who alleges that Ailes demanded that she stand up for him during a job interview so he could see her legs and subsequently sent her miniskirts to wear at work.
- Shelley Ross, who alleges that Ailes told her that “loyalty” in the workplace is extremely important and that he believes that the best expression of loyalty comes in the form of a “sexual alliance.”
- Marsha Callahan, who alleges that Ailes told her that he would be able to advance her modeling career if she were willing to sleep with him, and also alleges that Ailes asked her on multiple occasions to lift up her skirt for him, as well as to wear a garter belt.

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<sup>1</sup> Although media outlets described Ms. Carlson’s lawsuit as the first public outing of Ailes’s disgusting and lewd behavior, *New York* magazine reporter Gabriel Sherman included in his 2014 biography on Ailes interviews with four women who described multiple instances where Ailes used his position of power to make unwanted sexual advances towards junior female employees. See <http://nymag.com/daily/intelligencer/2016/07/six-more-women-allege-ailes-sexual-harassment.html>; see also Gabriel Sherman, *The Loudest Voice in the Room: How the Brilliant, Bombastic Roger Ailes Build Fox News – and Divided a Country* (2014). After Ailes attempted to defame Ms. Carlson in response to her lawsuit, Mr. Sherman quickly hit Fox with a detailed report of at least six women who asserted similar claims against Ailes.

- Andrea Tantaros, who alleges that Ailes asked her to twirl for him, requested that she hug him and made comments about her body, including that she must look good in a bikini. Ms. Tantaros commenced an action in New York Supreme Court against Fox, Ailes, William (“Bill”) Shine, Dianne Brandi and Suzanne Scott. *See Tantaros v. Fox News Network, LLC, et al.*, Index No. 157054/2016 (New York County, Supreme Court of the State of New York).

3. The fallout from the women’s allegations was swift and severe. Shortly after Ms. Carlson’s complaint, Rupert Murdoch, the owner of Fox, demanded that Ailes step down. Thereafter, Fox’s internal investigation unearthed evidence that sexual harassment of women employees extended beyond Ailes and his immediate circle. Tragically, reports leaked about the number of women working for Fox’s various subsidiaries that, over the last decade, personally experienced or witnessed other women being subjected to intimidation and sex-based conduct at the hands of male managers, supervisors and co-workers throughout the company in various departments.<sup>2</sup>

4. For instance, Tamara Holder, a former on-air contributor at Fox News Latino (“Fox Latino”), allegedly notified Fox of sexual harassment claims relating to conduct by Francisco Cortes, a senior executive at Fox Latino that took place in early 2015. Purportedly, Fox and Ms. Holder entered into a settlement.<sup>3</sup>

5. Moreover, since Fox ousted Ailes, more women continue to file claims against Fox in connection with Ailes’ sexual harassment. Last week, Julie Roginsky, a current Fox contributor, filed a lawsuit against Ailes, Fox and Bill Shine, the network’s co-president,

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<sup>2</sup> See [http://www.nytimes.com/2016/09/06/business/media/roger-ailes-hints-at-suit-against-new-york-magazine.html?\\_r=0](http://www.nytimes.com/2016/09/06/business/media/roger-ailes-hints-at-suit-against-new-york-magazine.html?_r=0).

<sup>3</sup> See <https://www.nytimes.com/2017/03/08/business/fox-news-roger-ailes-sexual-assault-settlement.html>; <http://money.cnn.com/2017/03/09/media/fox-news-sexual-harassment/>.

asserting that she faced retaliation for rebuffing Ailes's sexual advances and for refusing to disparage Ms. Carlson.<sup>4</sup>

6. These women, former and current employees, describe shockingly similar stories about men in positions of power at Fox who used their power to satisfy personal sexually motivated desires. Such evidence is critical background to the claims alleged herein.

7. These cases reveal that for decades the top-down harassment began with Ailes and permeated the corporate culture. This corporate culture cultivated and fostered a company where male executives were emboldened to treat female employees as second-class citizens, subjecting them to blatant gender bias and a sexually charged hostile work environment.

8. Recent media reports suggest that Fox engaged in a pattern and practice of bullying women into silence for purposes of protecting the status quo environment that indulged male executives' sexual whims. The sheer number of women who allege to have been treated in a similar manner and the depths within Fox that such discrimination descended to, shows that Fox failed to take action despite the obvious conclusion that these sexual harassment incidents were reasonably related and likely systemic.

9. For purposes of identifying and demonstrating a sexual discrimination hostile environment claim, conduct that is reasonably related to a continuing pattern of gender discrimination is crucial. Here, the extent to which Fox executives, including the company's chief legal counsel, Dianne Brandi, acted in ways designed to allow Ailes and other men occupying influential positions at Fox, to engage in such conduct is horrific.

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<sup>4</sup> See <https://www.nytimes.com/2017/04/03/business/media/fox-news-roger-ailes-harassment-suit.html>.

10. Further, the extent of prior known abuses is relevant to the issue whether female employees at Fox reasonably believed that complaining would lead to serious retaliation, if not outright termination.

11. The claims of the many former female employees share another common theme relating to the knowledge and ratification of the sexual discrimination by key Fox executives. Repeatedly, the allegations include facts that the highest-ranking executives at Fox knew about the discrimination, actively participated in it, knowingly looked the other way, or expressly ratified the discrimination by working to cover up the discriminatory conduct and silence the employees.<sup>5</sup>

12. The importance of these repeatedly named individuals cannot be overlooked. Specifically, they are all senior executives at Fox that design and issue corporate policies and protocols that are then passed down to corporate subsidiaries and affiliates, including WNYW/Ch. 5 (“Fox5”). Notably, these same executives select the individuals who will run the affiliate and subsidiary entities, including Fox5.

13. By way of example only, in addition to Ailes, such individuals include Jack Abernathy, Bill Shine, Dianne Brandi, Mark Kranz, Denise Collins, and Suzanne Scott. Although Ailes and a number of other persons were exited from the Company after Gretchen Carlson came forward, the Company appointed Abernathy and Shine as the new “co-presidents” of Fox, a position they maintain today. Ms. Brandi remains as chief legal counsel and Ms. Collins continues to work as head of HR.

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<sup>5</sup> *Tantaros v. Fox News Network, LLC, et al.*, Index No. 157054/2016 (New York County, Supreme Court of the State of New York) (Doc. No. 2) (alleging that when Ms. Tantaros dared report Ailes’s sexually demeaning conduct to Bill Shine, he marginalized and dismissed her claims by stating that Ailes was “a very powerful man” and that “Tantaros needed to let this one go.”).

14. Recently, reports have surfaced that Fox has entered into settlement agreements with former female employees alleging claims against Bill O'Reilly ("O'Reilly"), another powerful and influential male at Fox. Reportedly, O'Reilly earns an annual salary of about \$18 million as the host of "The O'Reilly Factor," a weeknight political show. The New York Times ("The Times") reported that O'Reilly's value to Fox is huge, stating that from 2014 through 2016, his show generated more than \$446 million in advertising revenues.

15. On April 3, 2017, The Times broke a story that at least five women had received settlement payments from O'Reilly after making claims of sexual harassment from as far back as 2004. The Times reported that the payments totaled about \$13 million.

16. As part of The Times' investigation, purportedly the claims by the women showed a shocking pattern of sexual harassment by O'Reilly. Specifically, O'Reilly used his power and influence to cultivate mentoring relationships with select female employees, who he then offered advice and suggested he could help advance their careers. After gaining trust, O'Reilly then would pursue sexual relationships with them, causing some to fear that if they rebuffed him, their careers would stall.

17. Disturbingly, the allegations against O'Reilly are substantially similar to the claims against Ailes.

18. Upon information and belief, Ailes knew of O'Reilly's unlawful conduct but failed to discipline O'Reilly, as Ailes was busy engaging in the exact same behavior.

19. Additionally, as with settlements involving Ailes, the same key executives would have been involved in the execution and disbursement of settlements involving O'Reilly. For example, such individuals include Mark Kranz, Dianne Brandi and Denise Collins.

20. Significantly, media outlets are reporting that the US Attorney General's office in New York is investigating whether senior executives at Fox, on a systemic basis, entered into substantial settlement agreements with employees subject to discrimination at the Company, and failed to report the payouts accurately to regulators, as well as conceal the negotiated claims from respective Board of Directors and Trustees.

21. Notably, it is reported that Mark Kranz was offered immunity as part of the investigation.<sup>6</sup>

22. Fox has confirmed that it has "been in communication with the U.S. attorney's office for months."

#### **THE COMPANY CULTURE EXTENDS TO FOX5**

23. "Fox" is known throughout the world. In particular, the brand that is "Fox" is associated with a distinct corporate identity, an image presented to the world of a media business run by, and controlled by, Rupert Murdoch ("Murdoch"). Whether the name "Fox," "Fox News" or "News Corporation" is used to describe the Company, the public identifies the multinational mass media company with its original founder, Australian native Murdoch. Over the years, Murdoch evolved his hugely successful News Corporation or "News Corp." into an even larger, more powerful, mass media company. Murdoch achieved growth, in part, by creating an American cable and satellite television channel, Fox News Channel ("FNC") in 1996. Murdoch appointed Ailes to lead FNC, and Ailes did so without interruption until his recent downfall.

24. In press releases, Murdoch explained the creation of Fox as a tool to extend News Corp.'s "worldwide platform" for "Fox programming."

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<sup>6</sup> <http://nymag.com/daily/intelligencer/2017/03/the-trouble-at-fox-news-keeps-getting-worse.html>.

25. Under Ailes direction, Fox's influence grew as it infiltrated additional media channels, and along the way formed a number of affiliate entities, including wholly owned subsidiaries, limited liability corporations and partnerships. Today, the "Fox" name is synonymous with the companies run by Ailes, and still controlled by Murdoch and his adult sons, James and Lachlan Murdoch, and a select group of individuals who serve as directors on multiple boards run by the Murdochs.

26. The newsroom at Fox5 is part of the "Fox programming" and unquestionably, part of the Fox "brand."

27. When anchors at Fox5 deliver the news, they do so in compliance with the top-down policies and messaging that comes from the board of directors at Twenty-First Century Fox, its executive leaders, Murdoch, James Murdoch, Lachlan Murdoch, Bill Shine and Jack Abernathy.

28. Unfortunately, for Ms. Curanaj, Fox5 is led by Byron Harmon ("Harmon"). Upon information and belief, Harmon was hand-picked by Jack Abernathy to work at Fox5. In line with his superiors, Harmon has perpetuated a work culture where women are marginalized and regularly subjected to unequal treatment as compared to their similarly situated male colleagues.

29. Ms. Curanaj, hired by Fox5 in 2011 as a general assignment reporter, repeatedly has been denied a full time position by Harmon who has worked as Fox5's News Director since 2012. Harmon has also engaged in a campaign to reduce the number of shifts Ms. Curanaj receives, which directly affects her compensation. Once Ms. Curanaj became pregnant, Harmon's treatment of her only worsened.

30. The unlawful discriminatory motives underlying Harmon's treatment of Ms. Curanaj are demonstrated by his near constant use of discriminatory language that evinces bias

against women, pregnant women, older individuals, people of Balkan descent and individuals with illnesses, including, *inter alia*,

- Telling Ms. Curanaj that she cannot anchor because she is “not attractive enough.”
- Telling Ms. Curanaj that she “look[s] like shit” or that she “looks sick.”
- Providing full time reporter positions to at least eight less qualified employees, all of whom are substantially younger than Ms. Curanaj.
- Removing Sharon Crowley from her role as the main fill-in anchor on Fox5, and telling Ms. Crowley that she was “too old” to anchor and that she “look[ed] like a Midwestern soccer mom.”
- Expressing his belief to Ms. Curanaj, who he ignorantly believed to be of Albanian descent, when she is in fact from Montenegro, that “all Albanians are doormen or criminals.”
- Referring to Ms. Curanaj as “Miss Albania.”
- Suggesting to another female employee who became pregnant that she would rather “stay at home and spend time with [her] baby” than return to work.
- Warning a female employee who was recently promoted against becoming pregnant by saying, “I hope you are not planning on getting pregnant anytime soon.”

31. As detailed *infra*, Harmon authored a novel that depicts women as nothing less than sexual servants for the appetites of hungry, powerful men.

32. From the beginning of her interaction with Fox, Ms. Curanaj was exposed to the disgusting and unlawful double standard applied to women, especially women Ailes found attractive but who failed to submit to his desires. Specifically, despite Harmon’s opinion of her looks, Ms. Curanaj was attractive enough for Ailes to give her a “private interview” during which he had her stand up and twirl around for him. Ailes “liked” what he saw. During this



interview, Ailes explained that Fox's "recipe for success" is to make sure that the women on Fox are shown "from the feet up," meaning that their legs would be visible to the television audience. Ailes stated that, for this reason, it is "important [for female talent] to look good from head to toe." This interview is shockingly similar to events reported by other women who found themselves alone with Ailes in his office.

33. As detailed below, like the other women employees at Fox who feared coming public with their complaints, Ms. Curanaj believed that she was doomed to suffer under Harmon's discriminatory exercise of power. After the recent disclosure of her pregnancy, Ms. Curanaj was subjected to even more discriminatory conduct, and, disturbingly, following her protected complaints to Fox5 about her pregnancy related discrimination, Defendants reduced Ms. Curanaj's work schedule even further.

34. When Ailes departed from Fox in September 2016, 21st Century Fox's top executives, including the executive chairman, and James and Lachlan Murdoch, said that Fox was committed to "maintaining a work environment based on trust and respect."

35. Fox has broken this promise.

36. In connection with Ms. Curanaj's employment, Fox has allowed the senior executive in charge of its NYC affiliate, Harmon, to create a distrustful and gender based hostile environment where female employees, especially those of child-bearing age or who become pregnant, fear consequences for obtaining such status.

37. On December 14, 2016, this action was commenced. In her complaint, Ms. Curanaj requested declaratory, injunctive and equitable relief, as well as monetary damages, against Defendants for discrimination in violation of: (i) 42 U.S.C. § 1981 ("§ 1981"); (ii) the New York State Human Rights Law, New York Executive Law §§ 290 *et seq.* ("NYSHRL");

and (iii) the New York City Human Rights Law, New York Administrative Code §§ 8-101 *et seq.* (“NYCHRL”).

38. Following the filing of this action, a protected complaint, Fox has responded by subjecting Ms. Curanaj to unprecedented micromanagement, performance scrutiny and other retaliatory conduct meant to intimidate and cause further harm to Ms. Curanaj. Accordingly, her retaliation claims are amended to include further and continuing acts that took place subsequent to December 14, 2016.

### **JURISDICTION AND VENUE**

39. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 as this action involves federal questions regarding the deprivation of Plaintiff’s rights under federal law. This Court has supplemental subject matter jurisdiction over Plaintiff’s related state and local law claims pursuant to 28 U.S.C. § 1367(a).

40. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices alleged herein, occurred in this district.

### **ADMINISTRATIVE PROCEDURES**

41. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging violations of: (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”); (ii) Title VII as amended by the Pregnancy Discrimination Act of 1974 (“PDA”); and (iii) the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.*, as amended by the ADA Amendments Act (the “ADA”).

42. On February 27, 2017, Ms. Curanaj received a Notice of Right to Sue from the EEOC.

43. Pursuant to NYCHRL § 8-502, Plaintiff will serve a copy of this Amended Complaint upon the New York City Commission on Human Rights and the New York City Law Department, Office of the Corporation Counsel within ten days of its filing, thereby satisfying the notice requirements of this action.

44. Plaintiff has complied with any and all other prerequisites to filing this action.

### **PARTIES**

45. Plaintiff Lidija Curanaj lives in Westchester County, New York. Plaintiff is employed by Defendants as a “Freelance Reporter.”<sup>7</sup> At all relevant times, Plaintiff met the definition of an “employee” under all applicable statutes.

46. Defendant Twenty-First Century Fox, Inc. is a corporation with its principal place of business in New York County, New York, and is duly organized and existing under and by virtue of the laws of the State of Delaware. At all relevant times, Twenty-First Century Fox, Inc. has met the definition of an “employer” of Plaintiff under all applicable statutes.

47. Defendant Fox Entertainment Group, LLC is a limited liability company with its principal place of business in New York County, New York, and is duly organized and existing under and by virtue of the laws of the State of Delaware. Fox Entertainment Group, LLC is a wholly owned subsidiary of Twenty-First Century Fox, Inc. In turn, Defendants Fox Television Stations, LLC and Fox News Network, LLC, are both wholly owned subsidiaries of Fox Entertainment Group, LLC. At all relevant times, Fox Entertainment Group, LLC has met the definition of an “employer” of Plaintiff under all applicable statutes.

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<sup>7</sup> Although Fox uses the title “Freelancer” or “Freelance Reporter,” Plaintiff is, and is treated as, an employee. She is paid on a W-2 with deductions made from her compensation, accrues sick and vacation days and is not permitted to work for any other television stations.

48. Defendant Fox Television Stations, LLC is a limited liability company with its principal place of business in New York County, New York, and is duly organized and existing under and by virtue of the laws of the State of Delaware. At all relevant times, Fox Television Stations, LLC has met the definition of an “employer” of Plaintiff under all applicable statutes.<sup>8</sup>

49. Upon information and belief, Defendant Byron Harmon is a resident of the State of New York. Byron Harmon is the News Director at Fox5.

### **FACTUAL ALLEGATIONS**

#### **I. Ms. Curanaj Applies For a Position with Fox News Channel and Is Sexually Harassed By Roger Ailes**

50. In or about February 2011, Ms. Curanaj met Roger Ailes at a dinner she attended with New York State Senator Gregory Ball.

51. Ailes took an immediate liking to Ms. Curanaj, and offered to bring her in for an interview for a position with Fox. Shortly thereafter, Ailes contacted Ms. Curanaj to schedule the interview, which ultimately took place in May 2011.

52. When Ms. Curanaj arrived at FNC’s New York City offices, she met with multiple FNC employees and executives, including Ailes and Bill Shine.

53. Initially, Ms. Curanaj met with these individuals in a group. However, following the group interview, Ailes invited Ms. Curanaj to “interview” with him privately.

54. During this private interview, Ailes insisted that Ms. Curanaj sit directly next to him on a couch in his office.

55. Ailes launched into a tirade about President Barack Obama, insisting that President Obama is a Muslim who had “ulterior motives” and was “working with the terrorists.”

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<sup>8</sup> As alleged, the various corporate entities operated as a single business enterprise for purposes of disseminating the Fox “brand” and Fox “programming message” to consumers. As such, the corporate Defendants are collectively referred to as “Fox.”

56. Ailes then shifted the discussion to explain what he described as FNC's "recipe for success." Specifically, Ailes told Ms. Curanaj that he always made sure that the women on FNC were shown "from the feet up," meaning that their legs would be visible to the television audience. Ailes stated that, for this reason, it is "important [for female talent] to look good from head to toe."

57. Ailes then asked Ms. Curanaj to stand up and "turn around" so that he could "see [her] from behind." This, of course, made Ms. Curanaj extremely uncomfortable, but, as requested, she stood up, quickly twirled around and sat back down.

58. Ailes leered at her and commented, "I like what I see."

59. The interview went well and Ailes indicated to Ms. Curanaj that she would soon receive an offer of employment. Indeed, she believed that Ailes intended to hire her.

60. Following Ms. Curanaj's private interview, Ailes reached out to Senator Ball, who had previously dated Ms. Curanaj.

61. Ailes did not ask Senator Ball about Ms. Curanaj's professional talents, abilities or qualifications.

62. Instead, Ailes asked Senator Ball whether Ms. Curanaj "put out," sexually.

63. To be clear, Ailes also asked Senator Ball, "how's the sex," in reference to Ms. Curanaj.

64. Senator Ball told Ailes that Ms. Curanaj was a "very nice girl," implying that she would not "put out" for Ailes. Shortly thereafter, Ailes called Ms. Curanaj and told her that he did not believe she was "ready" for FNC and suggested that she reach out to Fox's local stations instead.

65. Ms. Curanaj did not receive the position at FNC because Ailes determined that she would not submit to him sexually. Based on the temporal proximity between her private interview with Ailes, the call from Ailes to Senator Ball and Ailes' subsequent decision to not hire her, it was clear to Ms. Curanaj that she was "not ready" for FNC because of Ailes discovery that she would be unwilling to submit to him, sexually.

66. Ailes never said that he was dissatisfied with her abilities or qualifications, nor did he suggest that this was the reason she was "not ready."

67. Stunned by Mr. Ailes' statement, and aware that he had asked Senator Ball about her sexual proclivities, Ms. Curanaj was unable to ask him any further questions and hung up quickly. Thereafter, as instructed by Ailes, Ms. Curanaj reached out to local Fox stations for possible employment, specifically Fox5.

68. Unquestionably, through her experience with Ailes, Ms. Curanaj learned firsthand about the double standard applied to women at Fox. This experience, humiliating and demeaning, set the tone for her experiences at Fox5 under the supervision of Harmon.

## **II. Ms. Curanaj Is Hired By Fox5 and Subjected to Persistent Discrimination Throughout Her Employment**

69. Ms. Curanaj began working for Fox as a General Assignment Reporter for Fox5 on November 2, 2011.

70. At the time, she was hired as a "Freelance Reporter," instead of being hired as a permanent, full time employee.

71. Nonetheless, Ms. Curanaj was consistently scheduled to work four to five days per week.

72. Ms. Curanaj was a veteran of the television news industry, having previously worked for News 12 Westchester, WHNS TV – Fox Carolina and CBS as a reporter, anchor and network producer. During her five years at CBS, she was promoted four times.

73. Ms. Curanaj received numerous awards at these stations, including two Emmys, a first-place Associated Press award and two New York Press Club awards.

74. Thus, it is no surprise that Ms. Curanaj was immediately successful in her role at Fox5, and has continued to be extremely successful to this day.

75. Ms. Curanaj's success and career progression at Fox5, however, has been undermined every step of the way by Harmon, who was hired at Fox5 in 2012 and promoted to the position of News Director six months later.

76. Shortly thereafter, Ms. Curanaj – who is 38 years old – told Harmon that she wanted to be promoted to a full time position with a contract.

77. Although Harmon told Ms. Curanaj that she was “great” and “in the running” for a full time position, he proceeded to hire Liz Dahlem, who is eight years younger than Ms. Curanaj. In contrast to Ms. Curanaj's six years of anchoring experience and five years at Fox5, Ms. Dahlem was hired to anchor after only a brief stint as a freelancer.

78. At all relevant times, Harmon knew exactly how old Ms. Curanaj was because he specifically asked her.

79. When Ms. Curanaj asked Harmon why she was not selected for a permanent position, he told her that full time employees have to be able to anchor, and that she was not “anchor material.”

80. This was, of course, absurd, given that Ms. Curanaj has significant anchoring experience. Ms. Curanaj explained this and asked to take an anchor test.

81. Although Harmon agreed, he never actually set up the test. After repeatedly requesting that the test be set up, it was finally scheduled by Emad Asghar (“Asghar”), Fox5’s Assistant News Director. At all relevant times, Asghar knew exactly how old Ms. Curanaj was because he also specifically asked her.

**A. “Not Attractive Enough” To Anchor**

82. Ms. Curanaj performed very well during the anchor test, but when she asked Asghar what Harmon said about her performance, Asghar stated that while he knew that her performance was “great,” “it [was not] going to happen.” Meaning, Ms. Curanaj would not be permitted to anchor and, as a result, would not be hired as a permanent employee. Asghar told Ms. Curanaj that she was not “anchor material” as a result of how she looked. In response, Ms. Curanaj offered to get better makeup and clothes, which she did.

83. Ms. Curanaj then approached Harmon about this issue directly. Harmon told Ms. Curanaj that there was “no point” for him to even review her anchor test because he had already decided that she was not “anchor material.” Harmon told Ms. Curanaj that she would perhaps be a valuable asset at ABC or NBC, but “at Fox, you have to be especially attractive – just look at the women on Fox News.” He also said he could not risk executives at “Sixth Avenue,” the internal name for Fox’s 1211 Avenue of the America’s corporate office, seeing Ms. Curanaj “behind the desk even for just a minute,” because they ultimately had the final say on who could anchor, and Ms. Curanaj was not “Sixth Avenue” anchor material.

84. When pressed, Harmon told Ms. Curanaj that she was not “special” and “not attractive enough to be an anchor.”

85. Harmon told Ms. Curanaj that anchors must be “very attractive.”



86. Harmon's decision not to permit Ms. Curanaj to anchor, and therefore not to hire her full time, because she is "not attractive enough," is a transparent act of age and gender discrimination.

87. This decision reveals that Harmon's decision-making at Fox5 is based not on skills and qualifications, but rather on his own biases and beliefs as to what women should look like.

**B. Harmon's Demeaning Portrayal of Women**

88. Fox hired and promoted Harmon to lead Fox5 knowing that he published a "fictional" book in 2002, entitled "All the Women I've Loved." See Byron Harmon, *All the Women I've Loved* (2002). This "work of fiction" is a book about the sexual exploits of a character named "LeBaron," a male executive producer at a Fox5 affiliate in Washington, D.C.

89. Although categorized as mainstream fiction, Harmon's book is nothing less than a disgusting attempt at soft porn.<sup>9</sup> Including multiple characterizations of women as mere sexual toys whose role is to perform sexual favors to men, the book details how for men, getting married is like joining the federal "witness protection program."

90. By way of example only, the book contains the following passages:

Yes, negro, the eyebrow. Now answer my question or I'm revoking your p\*\*\*sy privileges.

Then he blew air kisses in her ear. Phoenix was hot and bothered. By the time he licked her neck while gently cupping her breasts from behind, Phoenix damn near came.

All I'm saying is this – look at you, man, cats dream about our lives. I ain't gay or nothing, but you're handsome...You're thirty-two years old, got a big-assed Lexus, and a phat town house. That's the shit young niggas dream about and why we

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<sup>9</sup> The book was made into a movie with the same title, "All the Women I've Loved." *See* <http://www.imdb.com/title/tt2047670/>.

worked so hard to get it. And now that you finally got it you want to punk out and turn in your playa card? **Fuck that, getting married is like joining the Witness Protection Program. It's the beginning of an unfamiliar new life with an unfamiliar new name: husband. And, bruh, I'm too selfish to be selfless.**

My d\*ck went from hard as a rock to soft as cotton candy. When I didn't move, Nia turned around and noticed my limpness.

“Oh hell naw, mother\*\*\*er! You wanted to f\*\*k, so we're gonna f\*\*k. Gimme that d\*ck.” **Nia got on her knees and proceeded to give me the best head I ever had.** I swear I saw birds and stars and shit floating around my head like in the cartoons. I was soon hard again, **but my knees were shaking like asses on lap dancers.**

Byron Harmon, *ALL THE WOMEN I'VE LOVED: A NOVEL*, 9-10, 35, 139 (2002).<sup>10</sup>

91. Many companies would be concerned about the message sent to female employees by promoting Harmon to such a leadership role in which he supervised countless women. Clearly, Fox executives, including Jack Abernathy, were not concerned that Harmon wrote and published a book that marginalizes and demeans women.

92. Similarly, Fox was not concerned whether his views would contribute to a work environment where women regularly felt like second-class citizens.

93. As evident, it is critical to know whether male executives at the highest level of Fox's corporate structure also openly engaged in conduct and statements that resulted in female employees being treated less-than similarly situated male employees. Such conduct inevitably would influence Harmon's understanding of what behavior towards women in the workplace was tolerated.

94. Facts about Ailes, O'Reilly and Fox's key executives directly relate to Ms. Curanaj's claims about whether the corporate culture at Fox endorsed male supervisors who

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<sup>10</sup> Some words were redacted in part due to their offensive nature.

fostered an environment that was openly hostile to women and whether Fox executives knew but chose to look the other way. Such facts, if true, would support Ms. Curanaj's belief that speaking out about gender discrimination not only would fail to remedy the conduct, but also would likely result in her termination.

**C. Harmon's Critique of Ms. Curanaj's Physical Appearance Contributed to the Gender Based Hostile Environment**

95. Understandably, Ms. Curanaj was upset and offended by Harmon's discriminatory statements, and asked him whether he thought she needed plastic surgery, and whether her nose was a problem for him.

96. Specifically, Ms. Curanaj offered to undergo rhinoplasty, take voice lessons and meet with a professional makeup artist, in an attempt to have the chance to anchor. Harmon responded by merely shrugging his shoulders.

97. In addition to repeatedly expressing his belief that Ms. Curanaj is generally unattractive, Harmon often tells Ms. Curanaj that she "look[s] like shit" or that she "looks sick."

98. Following one such occasion, Ms. Curanaj explained to Harmon that she has an illness, antiphospholipid syndrome, that is similar to lupus. In fact, as Harmon and others know at Fox5, Ms. Curanaj's immune-system illness can cause blood clots in her arteries, veins, as well as organs, including the kidneys, lungs and brain. This condition can cause multiple complications for women who are pregnant, and is responsible for miscarriages, stillbirths and high blood pressure.

99. On one occasion when Harmon felt entitled to tell Ms. Curanaj that she "looked like shit," she had suffered a miscarriage less than 24 hours before.

100. Ms. Curanaj told Harmon that the way he was scheduling her shifts was worsening the symptoms of her illness. For instance, unlike her colleagues, Ms. Curanaj would

often be scheduled to work an early morning shift on the days after she worked a late night shift. This prevented her from getting more than a few hours of sleep.

101. Harmon “solved” this problem by simply cutting Ms. Curanaj’s shifts due to her illness.

102. As a result, Ms. Curanaj often works only three days per week instead of four or five.

103. The decision to cut Ms. Curanaj’s shifts because of her illness is, of course, unlawful. Ms. Curanaj could have been accommodated by being given a regular schedule, but no one ever engaged in the interactive process with her.

**D. Not “Young Enough” to Anchor**

104. Since Ms. Curanaj joined Fox5, ten individuals have been hired or promoted to a full time position – Ms. Dahlem, Mac King, Allison Morris, Simone Boyce, Jennifer Lahmers, Zachery Keisch, Jessica Formoso, Joe Toohey, Jodi Goldberg, and Baruch Shemtov.

105. Each of these individuals is younger than Ms. Curanaj; some are younger by a decade or more. Of the ten individuals, only Ms. Morris had experience as an anchor, and Messrs. Toohey and Shemtov had no reporting experience.

106. Many were never employed by Fox5 as a Freelancer, and those that were held that position for only a few months before being promoted.

107. Ms. Curanaj has continued to ask Harmon for a full time position, and has received various inconsistent explanations as to why she has been passed over in favor of these eight younger, and less experienced, individuals.

108. At times, Harmon has said that full time employees need anchoring experience in New York City. However, he hired someone younger than Ms. Curanaj, who had no New York

City anchoring experience. When asked about this, Harmon changed his answer to say that his full time hires needed “recent” anchoring experience. As set forth above, eight of the ten hires had no anchoring experience.

109. All the while, however, Harmon has consistently expressed his belief that Ms. Curanaj is not attractive enough to anchor.

110. Harmon failed to subject the male employees hired to anchor, including Mac King, Zachery Keisch and Joe Toohey, to the same standard of physical attractiveness as women employees, including Ms. Curanaj.

111. In fact, Harmon has treated other older women reporters who he finds unattractive in a similar fashion.

112. By way of example only, prior to Harmon assuming the role of News Director, Sharon Crowley was the main fill-in anchor on Fox5. Shortly after he was named News Director, Harmon removed Ms. Crowley, who is over 40, from this position and told her that she was “too old” to anchor and by saying that she did not have the “right look,” that she “look[ed] like a Midwestern soccer mom,” and that everyone else outshined her. Upon information and belief, after Ms. Curanaj’s complaints became known, Ms. Crowley received a contract, a substantial raise, and her own special on Fox5. Upon information and belief, this was done to prevent Ms. Crowley from providing favorable testimony to Ms. Curanaj in this action.

113. As he does to Ms. Curanaj, in front of other employees, Harmon also openly tells Ms. Crowley that she “look[s] like shit” when he sees her without makeup. Harmon’s regular critique of Ms. Crowley, as well as other female employees, further contributed to a work environment where women were unlawfully subjected to gender based stereotyping and bias.

114. Despite her repeated requests, Harmon will not permit Ms. Curanaj to anchor very brief “cut-ins,” which he allows virtually every other reporter to do.

115. Harmon also refuses to feature her in promotional videos and regularly fails to recognize or compliment her significant accomplishments.

**E. “Miss Albania”**

116. Harmon has made numerous offensive and discriminatory comments about Ms. Curanaj’s nationality.

117. He repeatedly and openly referred to Ms. Curanaj as “Miss Albania.”

118. Incredulously, Harmon called her this without ever taking the time to find out that she is, in fact, from Montenegro.

119. He also asked Ms. Curanaj many times whether her family was connected with “the mob,” implying that Albanians, in general, engage in illegal business operations or operate outside the law. He told Ms. Curanaj that “Albanians love the mafia.”

120. Harmon also regularly expressed his belief to Ms. Curanaj that “all Albanians are doormen or criminals.”

121. Obviously, Harmon does not believe that Ms. Curanaj is capable of succeeding in a professional environment because he believed that she is Albanian – notwithstanding the fact that his bias and prejudice was more evident due to his apparent “confusion” between the two Balkan countries.

122. Clearly, her nationality factored into Harmon’s denial of a promotion from Freelancer to a full time position with a contract. Her national heritage worked to her detriment as Harmon used opportunities to reduce her hours (and thus her compensation).

123. Moreover, it is apparent that the fact that Ms. Curanaj is from Montenegro, and Harmon believed she was Albanian is, in part, why Harmon believes she is “not attractive enough” to anchor.

124. Ms. Curanaj told Harmon that his comments were offensive, and that her father worked very hard to become a property owner in America. Harmon expressed skepticism, saying “how is that possible,” and suggesting that Ms. Curanaj’s father could only have purchased property with the proceeds of criminal activity.

### **III. Ms. Curanaj Is Subjected to Egregious and Blatant Pregnancy Discrimination**

125. In late July 2016, Ms. Curanaj informed Asghar that she was pregnant.

126. Asghar stated that he would inform Harmon.

127. Ms. Curanaj was already aware that Harmon harbored bias against women who became pregnant while working for him.

128. For example, when Ms. Curanaj got married in the summer of 2012, Harmon disparagingly and inappropriately commented, “now that you’re in your 30s and married, you’re going to start having babies.”

129. Among Fox5 management, negative attitudes about pregnancy and bias against women were openly expressed. By way of example only, opinions and comments were made in the newsroom that included, “after these young girls [are hired], they get married,” and “turn 30,” and start “wanting babies” and “cause problems.”

130. Harmon has a history of failing to promote women who become pregnant or whom he believes may want to start a family.

131. Since Ms. Curanaj joined as a Freelancer, she is one of only two Freelancers that have not been promoted to a full time position. Stacey Delikat is the other.

132. Earlier this year, when Ms. Delikat was pregnant, she asked Harmon to accommodate her by providing a set schedule when she returned from maternity leave. This request was denied.

133. Moreover, Ms. Curanaj has heard that, in reference to Ms. Delikat's pregnancy, Harmon suggested that Ms. Delikat would rather "stay at home and spend time with [her] baby" than return to work.

134. It was also common knowledge in the newsroom that before Harmon promoted Teresa Priolo to a full time position, he warned her against getting pregnant by saying, "I hope you are not planning on getting pregnant anytime soon."

135. After she disclosed her pregnancy, Ms. Curanaj requested a regular schedule upon her return from her anticipated maternity leave.

136. She has been told that the station "will not be able to accommodate [her] request," and that she will not receive a set schedule when she comes back from maternity leave. Rather, it has been communicated her that she should call Fox5 after her pregnancy to see what can be "worked out."

137. Moreover, after disclosing her pregnancy, Ms. Curanaj was called into Harmon's office. Harmon, visibly furious, accused Ms. Curanaj of "talking shit" about him. He would not explain what Ms. Curanaj purportedly said or did.

138. Following disclosure of her pregnancy, Mr. Curanaj was taken off the weekend schedule at Fox5, which resulted in even fewer hours and less pay. Ms. Curanaj was told that this decision was made because of her pregnancy. Specifically, she was told by Asghar that if "something happened" to her on the weekend schedule, such as her having to go to the hospital, that he did not have a backup reporter to fill in. Although Ms. Curanaj assured Asghar that she



was fine physically and not expecting to go into labor until her due date, he refused to return her to the weekend schedule.

139. Moreover, Fox5 has made no effort to find Ms. Curanaj additional shifts during the week to make up for her lost weekend shifts.

140. Upon information and belief, after Ms. Curanaj's complaint was filed, Fox finally offered Ms. Delikat a contract to work as a staff reporter. Previously, Ms. Delikat worked as a freelancer in the same position as Ms. Curanaj. Upon information and belief, this was done to prevent Ms. Delikat from providing favorable testimony to Ms. Curanaj in this action.

**IV. Ms. Curanaj Puts Fox5 on Notice of Her Claims and Is Promptly Retaliated Against**

141. On Tuesday, November 8, 2016, Ms. Curanaj, through counsel, put Fox5 on notice of her claims of unlawful discrimination.

142. Immediately following receipt of Ms. Curanaj's complaints of unlawful discrimination, Fox5 began retaliating against her by significantly cutting her hours.

143. Since putting Fox5 on notice of her claims, Ms. Curanaj was scheduled to work only two days per week, less than ever before.

**V. Fox Retaliates Against Ms. Curanaj For Filing This Action**

144. Just days after this action was commenced, Ms. Curanaj and her performance suddenly became the focus of intense scrutiny and micromanagement by Fox. In contrast to pre-litigation conduct, Fox reacted to news of the filed complaint by subjecting Ms. Curanaj to unprecedented micromanagement and performance counseling on a nearly daily basis.

145. By way of background, when Ms. Curanaj is scheduled to arrive to work at 2:00 p.m., she calls in for her assignment at 1:00 p.m. Then, when she arrives at work, she either calls

in to the desk, or physically approaches the desk, to determine whether her assignment has changed.

146. On December 19, 2016, Ms. Curanaj called in at 1:00 p.m. and learned that she was assigned to sit on standby for breaking news. However, Ms. Curanaj's personal cell phone (which is essential for work) had stopped working. Thus, when Ms. Curanaj arrived at work at 2:00 p.m., she asked Frank Carlevatti ("Carlevatti"), a Fox5 Assignment Editor, whether she could go to the Verizon store to try to have her personal cell phone repaired. The Verizon store is one block from the office. After putting Ms. Curanaj on hold for a moment, Carlevatti replied, "of course, no problem." Nevertheless, very shortly thereafter, at 2:29 p.m., Peter Facini ("Facini"), a Managing Editor at Fox5, sent Ms. Curanaj an email that admonished her for going to the Verizon store.

147. Also on December 19, 2016, Facini attempted to belittle Ms. Curanaj in front of Executive Producer Amy Cohen when he angrily asked, "Lidia you're now on this Berlin story, did you know that?" However, Ms. Curanaj was aware of this assignment and Facini knew it. Specifically, Facini had already received an email from Ms. Curanaj wherein she acknowledged that she was assigned to the Berlin Christmas Market Attack.

148. On December 16, 2016, Facini sent another email indicating he was tracking her every move. Specifically, when she stepped out momentarily to go to a store, Facini sent her an admonishing email. Of course, Ms. Curanaj was well within her rights to stop briefly into a store as would any employee on a break be entitled to enter a store. Moreover, her performance was exemplary that day as Ms. Curanaj was able to complete her story a full half hour before it was slotted to air.

149. Prior to commencing this action, Ms. Curanaj's minute-by-minute whereabouts had never been questioned by Facini or anyone else at Fox.

150. Additionally, on December 13, 2016, Facini sent Ms. Curanaj a disapproving email wherein he chastised her for referring to a school in a story as "HM Milnes Elementary School," rather than "HB Milnes Elementary School." However, as Facini knows, he checked and approved Ms. Curanaj's script for the very segment about which he complained. Moreover, Facini made it a point to state that the principal of the school called to complain. However, on December 15, 2016, the subject of one of Ms. Curanaj's stories called Facini to tell him that Ms. Curanaj did fantastic work on the story. Facini never told Ms. Curanaj about the laudatory call.

151. Notably, prior to this litigation and the exercise of her protected complaints, Ms. Curanaj did not receive emails from Facini that critiqued her performance, much less attempted to micro-manage her every second at Fox5. Defendants' intent is clear: create a paper trail in an effort to justify an impending discriminatory and retaliatory termination.

152. After she filed her complaint, Ms. Curanaj learned that Asghar "announced" her lawsuit to the Fox5 team in multiple meetings. Ms. Curanaj was told that immediately following one of Asghar's "announcements," which occurred during the December 14, 2016 3:00 p.m. meeting, the entire newsroom spent the rest of the afternoon talking about Ms. Curanaj. Asghar's announcements were designed to alienate and ostracize Ms. Curanaj, and they have succeeded in doing so. Indeed, hardly anyone in the newsroom will even speak with Ms. Curanaj following these announcements.

153. In late December, Ms. Curanaj received for the first time, emails and work schedules that suggested Defendants were attempting to limit the availability of her allotted sick

days, vacation days or other paid time off (“PTO”). Such conduct similarly indicates that Fox5 intends to impede her benefits or otherwise unlawfully retaliate against her for speaking out.

154. Following these events, Ms. Curanaj promptly placed Fox5 on notice that its conduct was retaliatory, unlawful and meant to hinder and negatively affect Ms. Curanaj’s work performance. In response, Fox5 proceeded to engage in further retaliatory conduct.

155. For example, Facini continued to monitor Ms. Curanaj’s time in an unprecedented manner. On December 26, 2016, Facini attempted again to create a paper trail to suggest that Ms. Curanaj was “missing” or not performing work that she was required to do. Specifically, Ms. Curanaj arrived and reported in at the assignment desk at 2:00 p.m. She was told that a story had not been assigned to her yet. At approximately 2:42 p.m., Facini sent her a frantic email telling her to report to a certain location for a story. Within one or two minutes after sending the email, Facini called Ms. Curanaj on her cell. At the time, however, Ms. Curanaj was in the women’s bathroom. Concerned that something important had happened, Ms. Curanaj called him back from a stall in the bathroom. Thereafter, she ran to the newsroom to meet Facini to learn that the purported “emergency” was not even breaking news and another Fox5 employee was already on the scene. Additionally, announcements were made over the intercom system paging Ms. Curanaj while she was in the bathroom.

156. Given that Ms. Curanaj was in the final trimester of her pregnancy, she should not have had to worry each time she needed to use the bathroom that Facini would be attempting to accuse her of poor performance or absence from work. Unquestionably, he could have asked other coworkers where she was, checked her desk to see her things were there or waited for her to respond via email before making intercom announcements and frantically calling.

157. Facini instituted this micromanaging behavior only after the case was filed. In addition to trying to intimidate and bully her, Facini's continued micromanaging of Ms. Curanaj reveals a desperate attempt to fabricate an anticipated claim that Ms. Curanaj is a low performing employee.

158. In early January 2017, Ms. Curanaj learned that Joe Ciccone, a Fox5 photographer/editor, was telling coworkers that Harmon said the following things to him in connection with Ms. Curanaj's protected complaints:

- **“Lidia isn't winning a penny,”**
- **“Lidia is a liar looking for a payout,”**
- **“The case is being dismissed and then she'll be fired,”**
- **“Anyone who backs her up will go down too because she has no case,”  
and**
- **“She's never going to get another job in TV again.”**

159. These statements purportedly made by Harmon were explicit threats meant to retaliate against Ms. Curanaj as well as intimidate and influence current employees about the lawsuit. Such remarks further indicate that Defendants are attempting to dissuade other similarly-situated women employees, pregnant or not, from coming forward with claims supporting Ms. Curanaj. Messaging to employees that **“anyone who backs [Ms. Curanaj] up will go down too”** is sufficient to deter reasonable employees from asserting rights.

160. Ms. Curanaj placed Fox5 on notice about the retaliation set forth above on January 9, 2017. In response, Defendants claimed that management simply did “not make” any disparaging comments about the case and told employees that they are to continue working with her as if the lawsuit had not been filed. To the contrary, the above comments cast doubt on any

purported neutrality expressed by Defendants when discussing the case and lend support to Ms. Curanaj's claims of retaliation.

**VI. Fox Is Responsible For Harmon's Conduct**

161. The cases against Ailes and O'Reilly, two of the most prominent figures associated with Fox, show that gender discrimination was practiced at the highest levels of the organization, reverberating its way through the corporate chain. The sheer number of women alleging claims, as well as the number of years in which the alleged abuse occurred are critical to demonstrate what conduct, as it relates to women, was tolerated and fostered by Fox and the reasonableness of the claim that such top-down discrimination reached the most senior executives at Fox affiliate television stations, including Fox5.

162. The corporate culture at Fox was not department specific. Rather, corporate policy decisions were centralized at "Sixth Avenue" and then issued to the related entities.

163. Reasonably, Harmon interacted with "Sixth Avenue" on a regular basis. Such information is in Fox's possession, not Ms. Curanaj's possession. Similarly, Harmon was aware of the way Ailes and O'Reilly, and other influential men at Fox, interacted with female employees.

164. The protocol surrounding what is considered acceptable treatment of women at Fox came from the highest authority at Fox – Ailes. Moreover, based on the recent revelations in the media about the number of secret settlements between Fox and female employees, whether for O'Reilly or Ailes, it is clear that other senior executives were fully aware of what was happening.<sup>11</sup> Specifically, Dianne Brandi has been the chief legal counsel at Fox for more than

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<sup>11</sup> See <https://www.nytimes.com/2017/04/01/business/media/bill-oreilly-sexual-harassment-fox-news.html>.

18 years. Mark Kranz acted as the CFO, and a trusted confidant of Ailes, since at least 2006. Moreover, Denise Collins has acted as the head of HR for more than 15 years.

165. As recently alleged in an action filed in the Supreme Court for New York, County of the Bronx, *Tichaona Brown, et al. v. Twenty-First Century Fox, Inc., et al.*, Index No. 22446/2017E (Bronx County, Supreme Court of the State of New York), at least three black women allege that the Controller and SVP of Accounting, Judith Slater, blatantly engaged in vicious and atrocious racial discrimination in front of all executives based on the second floor of “Sixth Avenue,” including Ailes, Bill Shine, Dianne Brandi, Denise Collins and Mark Kranz.

166. Here, evidence will be uncovered that shows Fox corporate executives managed and controlled the affairs of Fox with the intent that its corporate brand is viewed as a single business, a national multimedia giant, and part of the “Fox worldwide platform” of news dissemination. Because Fox represents itself as one organization, the fact that Fox5 operates within the construct of a limited liability corporation, cannot shield Fox from corporate responsibility. For instance, if Fox created Fox Television Networks to take advantage of favorable tax positions, or corporate regulatory and banking laws, such status fails to distance Fox from the conduct of Harmon, a man hired by Fox and who continues to work as an agent for Fox.

167. Because Harmon acted as an agent for Fox, and acted within the scope of his agency, Fox is responsible for his discrimination of Ms. Curanaj, including the fostering and perpetuation of a sexually charged, hostile work environment at Fox5.

168. Moreover, as part of Fox’s press release when Ailes was fired, Murdoch announced that Jack Abernethy and Bill Shine would replace Ailes and serve as Co-Presidents. Murdoch announced that Abernethy and Shine would report to Murdoch. In these press releases,

Murdoch said that Abernathy would oversee Fox's 28 owned and operated stations in the nation's largest television markets, including Fox5.

**FIRST CAUSE OF ACTION**  
**(Discrimination and Hostile Work Environment in Violation of § 1981)**  
*Against All Defendants*

169. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

170. Defendants have discriminated against Plaintiff on the basis of her race and/or ethnicity in violation of § 1981 by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her race and ethnicity.

171. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

172. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

173. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of § 1981, for which Plaintiff is entitled to an award of punitive damages.

**SECOND CAUSE OF ACTION**  
**(Retaliation in Violation of § 1981)**  
*Against All Defendants*

174. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

175. Defendants have retaliated against Plaintiff on the basis of her protected complaints by, *inter alia*, cutting her hours even further.



176. Additionally, as set forth above, after this action was commenced, Defendants engaged in further and continuing retaliatory acts that took place subsequent to December 14, 2016, and are continuing.

177. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

178. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of § 1981, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

179. Defendants' unlawful retaliatory actions constitute malicious, willful and wanton violations of § 1981, for which Plaintiff is entitled to an award of punitive damages.

**THIRD CAUSE OF ACTION**  
**(Race, Ethnicity and National Origin Discrimination**  
**and Hostile Work Environment in Violation of the NYSHRL)**  
*Against All Defendants*

180. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

181. Defendants have discriminated against Plaintiff on the basis of her race, ethnicity and national origin in violation of the NYSHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her race, ethnicity and national origin.

182. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

183. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

**FOURTH CAUSE OF ACTION**  
**(Age Discrimination and Hostile Work Environment in Violation of the NYSHRL)**  
***Against All Defendants***

184. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

185. Defendants have discriminated against Plaintiff on the basis of her age in violation of the NYSHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her age.

186. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

187. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

**FIFTH CAUSE OF ACTION**  
**(Disability Discrimination and Hostile Work Environment in Violation of the NYSHRL)**  
***Against All Defendants***

188. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

189. Defendants have discriminated against Plaintiff on the basis of her disability and/or perceived disability in violation of the NYSHRL by, *inter alia*, denying her a full time

position, cutting her hours and subjecting her to a hostile work environment because of her disability and/or perceived disability.

190. Defendants have also discrimination against Plaintiff on the basis of her disability by failing to accommodate her.

191. Defendants have also discrimination against Plaintiff on the basis of her disability by failing to engage in the interactive process.

192. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

193. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

**SIXTH CAUSE OF ACTION**  
**(Gender Discrimination and Hostile Work Environment in Violation of the NYSHRL)**  
***Against All Defendants***

194. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

195. Defendants have discriminated against Plaintiff on the basis of her gender in violation of the NYSHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her gender.

196. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

197. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

**SEVENTH CAUSE OF ACTION**  
**(Pregnancy Discrimination and Hostile Work Environment in Violation of the NYSHRL)**  
***Against All Defendants***

198. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

199. Defendants have discriminated against Plaintiff on the basis of her pregnancy in violation of the NYSHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her pregnancy.

200. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

201. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

**EIGHTH CAUSE OF ACTION**  
**(Retaliation in Violation of the NYSHRL)**  
***Against All Defendants***

202. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

203. Defendants have retaliated against Plaintiff on the basis of her protected complaints by, *inter alia*, cutting her hours even further.

204. Additionally, as set forth above, after this action was commenced, Defendants engaged in further and continuing retaliatory acts that took place subsequent to December 14, 2016, and are continuing.

205. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

206. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

**NINTH CAUSE OF ACTION**  
**(Race, Ethnicity and National Origin Discrimination**  
**and Hostile Work Environment in Violation of the NYCHRL)**  
*Against All Defendants*

207. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

208. Defendants have discriminated against Plaintiff on the basis of her race, ethnicity and national origin in violation of the NYCHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her race, ethnicity and national origin.

209. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

210. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

211. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

**TENTH CAUSE OF ACTION**  
**(Age Discrimination and Hostile Work Environment in Violation of the NYCHRL)**  
***Against All Defendants***

212. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

213. Defendants have discriminated against Plaintiff on the basis of her age in violation of the NYCHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her age.

214. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

215. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

216. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

**ELEVENTH CAUSE OF ACTION**  
**(Disability Discrimination and Hostile Work Environment in Violation of the NYCHRL)**  
***Against All Defendants***

217. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

218. Defendants have discriminated against Plaintiff on the basis of her disability and/or perceived disability in violation of the NYCHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her disability and/or perceived disability.

219. Defendants have also discrimination against Plaintiff on the basis of her disability by failing to accommodate her.

220. Defendants have also discrimination against Plaintiff on the basis of her disability by failing to engage in the interactive process.

221. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

222. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

223. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

**TWELFTH CAUSE OF ACTION**  
**(Gender Discrimination and Hostile Work Environment in Violation of the NYCHRL)**  
***Against All Defendants***

224. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

225. Defendants have discriminated against Plaintiff on the basis of her gender in violation of the NYCHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her gender.

226. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

227. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

228. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

**THIRTEENTH CAUSE OF ACTION**  
**(Gender Discrimination and Hostile Work Environment in Violation of the NYCHRL)**  
***Against All Defendants***

229. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

230. Defendants have discriminated against Plaintiff on the basis of her gender in violation of the NYCHRL by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her gender.

231. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.



232. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

233. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

**FOURTEENTH CAUSE OF ACTION**  
**(Retaliation in Violation of the NYCHRL)**  
*Against All Defendants*

234. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

235. Defendants have retaliated against Plaintiff on the basis of her protected complaints by, *inter alia*, cutting her hours even further.

236. Additionally, as set forth above, after this action was commenced, Defendants engaged in further and continuing retaliatory acts that took place subsequent to December 14, 2016, and are continuing.

237. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

238. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

239. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

**FIFTEENTH CAUSE OF ACTION**  
**(Pregnancy Discrimination and Hostile Work Environment in Violation of Title VII)**  
***Against the Fox Defendants***

240. Plaintiff hereby repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

241. Defendants have discriminated against Plaintiff on the basis of her gender and her status as pregnant in violation of Title VII by, *inter alia*, denying her a full time position, cutting her hours and subjecting to her to a hostile work environment because of her gender and status as pregnant.

242. Defendants violated Title VII by denying Plaintiff the same terms and conditions of employment available to employees who are not pregnant, including, but not limited to, subjecting Plaintiff to disparate working conditions and compensation.

243. Defendant also violated Title VII by creating and allowing a culture of gender discrimination to permeate Plaintiff's work environment. This hostile and abusive work environment was created by decisions, preferences and conduct engaged in by Defendant Harmon, as well as by Fox. The hostile work environment was promoted by Fox's continuous ratification of Defendant Harmon's conduct and its own conduct.

244. As a direct and proximate result of Fox's unlawful discriminatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, including, but not limited to, loss of future income, compensation and benefits for which she is entitled to an award of damages.

245. As a direct and proximate result of Fox's unlawful discriminatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, emotional distress for which she is entitled to an award of damages.

246. Fox's unlawful and discriminatory actions constitute malicious, willful and wanton violations of Title VII, for which Plaintiff is entitled to an award of punitive damages.

**SIXTEENTH CAUSE OF ACTION**  
**(Retaliation in Violation of Title VII)**  
*Against the Fox Defendants*

247. Plaintiff hereby repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

248. By the actions detailed above, among others, Defendants have retaliated against Plaintiff based on her protected activities in violation of Title VII by, *inter alia*, ignoring her protected complaints about the discriminatory treatment she was subjected to, including discrimination based on her gender and status as pregnant, and by engaging in retaliatory conduct after Plaintiff commenced this action, including by micro-managing her daily work and subjecting her to increased scrutiny.

249. Fox engaged in this conduct subsequent to and in direct connection with Plaintiff's protected complaints.

250. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, including, but not limited to, loss of future income, compensation and benefits for which she is entitled to an award of damages.

251. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer emotional distress for which she is entitled to an award of compensatory damages.

252. Defendants' unlawful and retaliatory actions were intentional, done with malice and/or showed a deliberate, willful, wanton and reckless indifference to Plaintiff's rights under Title VII, for which Plaintiff is entitled to an award of punitive damages.

**SEVENTEENTH CAUSE OF ACTION**  
**(Disability Discrimination, Retaliation and Hostile Environment in Violation of ADA)**  
***Against the Fox Defendants***

253. Plaintiff hereby repeats and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

254. Defendants have discriminated against Plaintiff on the basis of her disability, or perceived disability, in violation of the ADA. Defendants have discriminated against Plaintiff on the basis of her disability and/or perceived disability in violation of the ADA by, *inter alia*, denying her a full time position, cutting her hours and subjecting her to a hostile work environment because of her disability and/or perceived disability.

255. Defendants have also discrimination against Plaintiff on the basis of her disability by failing to accommodate her.

256. Defendants have also discrimination against Plaintiff on the basis of her disability by failing to engage in the interactive process.

257. After Plaintiff engaged in protected complaints about her disability, Defendants responded by subjecting Plaintiff to retaliatory acts, including as set forth above, excessive scrutiny of her performance and micro-managing of her work.

258. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which she is entitled to an award of damages.

259. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the ADA, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress for which she is entitled to an award of damages.

260. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the ADA, for which Plaintiff is entitled to an award of punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against Defendants, containing the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States and the State and City of New York;

B. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages;

C. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for her mental anguish and emotional distress, humiliation, embarrassment, stress and anxiety, loss of self-esteem, self-confidence and personal dignity, and emotional pain and suffering and any other physical and mental injuries;

D. An award of damages to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to her professional and personal reputations and loss of career fulfillment;

- E. An award of punitive damages;
- F. An aware of liquidated damages;
- G. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's reasonable attorneys' fees to the fullest extent permitted by law; and
- H. Such other and further relief as the Court may deem just and proper.


**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: April 10, 2017  
New York, New York

Respectfully submitted,

**WIGDOR LLP**

By:  \_\_\_\_\_

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*Counsel for Plaintiff*