

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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

Plaintiff,

v.

FOX NEWS NETWORK, LLC,

Defendant.

C.A. No. N21C-03-257 EMD

CONSOLIDATED

**REDACTED PUBLIC VERSION**

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

Plaintiff,

v.

FOX CORPORATION,

Defendant.

C.A. No. N21C-11-082 EMD

**DEFENDANT FOX CORPORATION'S ANSWERING BRIEF IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

OF COUNSEL:

Dan K. Webb  
WINSTON & STRAWN LLP  
35 W. Wacker Drive  
Chicago, IL 60601-9703  
(312) 558-5600

Paul D. Clement  
Erin E. Murphy  
CLEMENT & MURPHY, PLLC  
706 Duke Street  
Alexandria, VA 22314  
(202) 742-8900

Scott A. Keller  
LEHOTSKY KELLER LLP  
200 Massachusetts Avenue NW  
Washington, D.C. 20001  
(512) 693-8350

Eric M. George  
Katherine A. Petti  
Noah S. Helpert  
ELLIS GEORGE CIPOLLONE  
O'BRIEN ANNAGUEY LLP  
2121 Avenue of the Stars, 30<sup>th</sup> Floor  
Los Angeles, CA 90067  
(310) 274-7100

Blake Rohrbacher (#4750)  
Katharine L. Mowery (#5629)  
Angela Lam (#6431)  
RICHARDS, LAYTON & FINGER, P.A.  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7700

*Attorneys for Defendant Fox Corporation*

Dated: February 8, 2023

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PRELIMINARY STATEMENT .....	1
NATURE AND STAGE OF THE PROCEEDINGS .....	2
STATEMENT OF QUESTIONS INVOLVED.....	2
STATEMENT OF FACTS .....	3
A.    Fox Corporation’s Broad Media Business .....	3
B.    Dominion’s Lawsuit Against Fox Corporation.....	4
C.    The Voluminous Discovery Record.....	8
1.    Fox News Hosts Uniformly Testified that Fox Corporation Did Not Play Any Role in Creating or Publishing Any of the Challenged Coverage.....	9
2.    Fox Corporation Executives Similarly Testified that They Did Not Play Any Role In Publishing The Allegedly Defamatory Statements.....	11
3.    Fox News Executives and Employees Uniformly Testified that Fox Corporation Played No Role In Creating or Publishing any of the Challenged Coverage.....	13
4.    The Written Discovery Record Contains No Evidence that Fox Corporation Played Any Role—Direct or Otherwise—In Creating or Publishing Any of the Challenged Coverage.....	15
ARGUMENT .....	16
I.    Fox Corporation Did Not Participate or Have Any Role In the Creation or Publication of the Challenged Statements.....	17
A.    The Evidence Uniformly Demonstrates that Fox Corporation Did Not Play Any Role in the Creation or Publication of the Challenged Statements.....	18

**TABLE OF CONTENTS**  
**(Continued)**

	<b><u>Page</u></b>
B. Dominion’s Evidence of Occasional Communications with Fox News Unrelated to Dominion Is Woefully Insufficient. ....	21
C. Dominion’s Suggestion that Fox Corporation Was Responsible for the Challenged Statements Because It Could Have Stopped Their Publication Is Foreclosed By Law.....	27
II. Dominion Has Not Produced Anything Close to Clear and Convincing Evidence that Anyone At Fox Corporation Published Any Challenged Statement With Actual Malice. ....	28
CONCLUSION .....	33

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*Ertel v. Patriot-News Co.*,  
674 A.2d 1038 (Pa. 1996).....27

*Gaeta v. N.Y. News Inc.*,  
95 A.D.2d 315 (N.Y. App. Div. 1983).....16

*Harte-Hanks Commc’ns, Inc. v. Connaughton*,  
491 U.S. 657 (1989).....30

*N.Y. Times Co. v. Sullivan*,  
376 U.S. 254 (1964).....16

*Treppel v. Biovail Corp.*,  
2005 WL 2086339 (S.D.N.Y. Aug. 30, 2005).....16

*US Dominion, Inc. v. Fox Corp.*,  
2022 WL 2229781 (Del. Super. Ct. June 21, 2022).....*passim*

## PRELIMINARY STATEMENT

Dominion’s suit against Fox Corporation hinges on its allegation that “Fox Corporation executives such as Rupert and Lachlan Murdoch . . . chose to publish and broadcast the defamatory statements about Dominion across Fox.” Fox Corp. Complaint ¶166. Or as this Court put it, Dominion’s lawsuit relies on the theory “that Fox Corporation played a *direct role* in the creation and publication of the statements at issue.” *US Dominion, Inc. v. Fox Corp.*, 2022 WL 2229781, at \*9 (Del. Super. Ct. June 21, 2022) (emphasis added).

After obtaining millions of documents and taking dozens of depositions—including depositions of Fox Corporation’s CEO, Fox Corporation’s Chairman, Fox News’s CEO, Fox News’s President, and dozens of producers, on-air talent, and executives—Dominion has produced zero evidentiary support for its dubious theory that high-level executives at Fox Corporation “chose to publish and broadcast” or played a “direct role in the creation and publication of the statements at issue.” Indeed, despite 178 pages of briefing, Dominion barely even mentions Fox Corporation in its summary judgment motion. The handful of selective quotes from documents referencing Fox Corporation or its executives Dominion does offer have nothing to do with the 115 statements that Dominion challenges—and therefore cannot possibly establish defamation liability.

Bereft of evidence showing Fox Corporation ever did anything with respect to the statements, Dominion is left arguing that Fox Corporation should be on the hook because Rupert or Lachlan Murdoch might have had the power to step in and *prevent* the challenged statements from airing. That argument has no basis in defamation law, would obliterate the distinction between corporate parents and subsidiaries, and finds no support in the evidence. It is therefore *Fox Corporation* that is entitled to summary judgment in its favor. At the very least, Dominion is not remotely entitled to summary judgment against Fox Corporation.

#### **NATURE AND STAGE OF THE PROCEEDINGS**

Plaintiffs filed their complaint against Fox Corporation on November 8, 2021. Fox Corporation filed a motion to dismiss on December 30, 2021. The Court heard argument on the motion in March 2022. The Court granted in part and denied in part Fox Corporation's motion to dismiss on June 21, 2022, and Fox Corporation filed its answer on July 6, 2022. The Court consolidated the Fox News and Fox Corporation cases on December 22, 2022. On January 17, 2023, both Fox Corporation and Dominion moved for summary judgment in their respective favors.

#### **STATEMENT OF QUESTIONS INVOLVED**

Whether Dominion is entitled to summary judgment against Fox Corporation.

## STATEMENT OF FACTS

### **A. Fox Corporation's Broad Media Business**

Fox Corporation is a publicly traded news, sports, and entertainment company that owns numerous subsidiary businesses. Fox Corporation produces and delivers news, sports, and entertainment content through its primary brands, including FOX News Media (the trade name for Fox News Network, which includes Fox News Channel, Fox Business Network, Fox Digital, Fox News Audio, and Fox Weather); Fox Sports; Fox Entertainment; Fox Television Stations; and the ad-supported video on demand service TUBI. Ex. G14, Fox Corporation 2022 Form 10-K, at 2.<sup>1</sup> These subsidiaries all maintain their own employees, management structures, and corporate executives. The programming on Fox Corporation's outlets is diverse and substantial. It includes shows such as *Lego Masters*, *Hell's Kitchen*, and *Bob's Burgers*, sporting events such as NFL and NCAA football, MLB, and FIFA, television episodes and movies that users can stream online, and news, opinion, and information content available from Fox News Channel, Fox Weather, Fox Business Network, and Fox News Audio.

<sup>1</sup> All exhibits are attached to the Mowery and Helpern Declarations filed with Fox News and Fox Corporation's Motion for Summary Judgment briefs or the Helpern Declaration filed contemporaneously herewith.



## **B. Dominion’s Lawsuit Against Fox Corporation**

In March 2021, US Dominion, Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation (collectively, “Dominion,” or “Plaintiffs”), sued Fox News Network, LLC for defamation based on coverage of the 2020 election on Fox Business Network and Fox News Channel. *US Dominion, Inc. v. Fox News Network, LLC*, Complaint, D.I. 1 (Del. Super.) (“Fox News Compl.”). The Court is by now familiar with the allegations in that lawsuit. Detailed descriptions of the 115 statements that Dominion challenges can be found in Fox News’s Motion for Summary Judgment (“FNN MSJ”) and accompanying appendix, which Fox Corporation incorporates by reference.

In brief, Dominion’s claim against Fox News stems from coverage of and commentary on allegations leveled by then-President Donald Trump and his lawyers that Dominion voting machines were used to fraudulently influence the outcome of the hotly contested 2020 presidential election. Fox News Compl. ¶179. The federal government and numerous state governments investigated those allegations, which were pressed in numerous lawsuits brought by the President’s lawyers and allies across the country in an effort to overturn the election before the mid-December deadline for finalizing the electoral vote. *Id.* Virtually every media outlet in the country, if not the world, covered that unprecedented effort to alter the results of a presidential election. *Id.* ¶¶17, 50, 69, n.79; *see also, e.g.*, Exs. D18, Cause of

Election Day Glitch in Georgia Counties Still Unexplained, Politico (Nov. 4, 2020); D19, Georgia’s Gwinnett County blames Dominion Voting Systems for day-long delay reporting results, CNN (Nov. 6, 2020). Yet Dominion sued only three: conservative-leaning outlets Fox News, Newsmax Media, and OANN.

Dominion did not initially sue Fox Corporation or allege that any of its employees, officers, or directors made or published any of the statements it challenges. *See* Fox News Compl. ¶179. Almost eight months later, however, and before obtaining any document production or serving any non-party subpoena on Fox Corporation in the Fox News matter, Dominion filed a separate lawsuit against Fox Corporation and Fox Broadcasting, LLC, alleging essentially the same defamation claims, based on the same statements challenged in its suit against Fox News. Indeed, the bulk of Dominion’s new complaint was copied verbatim from its complaint against Fox News. *US Dominion, Inc. v. Fox Corp.*, Complaint, D.I. 1 (Del. Super.) (“Complaint”). As summarized by this Court, the Complaint accused “Fox Corporation, acting through Rupert and Lachlan Murdoch and others,” of being “directly involved in the ‘defamatory scheme’” against Dominion. *Fox Corp.*, 2022 WL 2229781, at \*2. In particular, Dominion alleged that “Fox Corporation participated in the creation and publication of Fox News’s defamatory statements,” claiming that “executives at Fox Corporation believed Fox News would benefit if it endorsed former President Trump’s election fraud narrative [so they] ‘pressur[ed]’

Fox News to ‘lure the Fox audience back home’ and ‘encouraged’ on-air personalities to perpetuate false claims about Dominion; and Fox Corporation ‘rewarded’ those at Fox News who complied with the alleged instructions and ‘punished’ those who did not.” *Id.* at \*8.

Fox Corporation and Fox Broadcasting moved to dismiss the Complaint. The Court granted the motion as to Fox Broadcasting. While it permitted the case to proceed against Fox Corporation, it did so on a narrow basis. Recognizing that corporate veil-piercing is available only in the Court of the Chancery, not the Superior Court, the Court rejected veil-piercing as a theory of liability against Fox Corporation as a matter of law. *See, e.g.*, Exs. J1, Motion to Dismiss Oral Argument Hearing Tr., at 20:15-21:4 (Mar. 15, 2022); J2, Motion for Consolidation Oral Argument Hearing Tr., at 96:9-20 (Dec. 21, 2022). The Court also cast considerable doubt on Dominion’s corporate-control theory, emphasizing that the agency theory of vicarious liability cannot be used as an end-run around the limitations on veil-piercing. As the Court explained: “Dominion’s agency theory rests primarily on its assertion that Fox Corporation exercises a high degree of control over the operations of Fox News ... [which] come[s] close to contravening the ‘fundamental [rule] that a parent is considered a legally separate entity from its subsidiary and cannot be held liable for the subsidiary’s action based solely on its ownership of a controlling

interest in the subsidiary.” *Fox Corp.*, 2022 WL 2229781, at \*9 (internal citation omitted).

The Court ultimately allowed Dominion’s claims against Fox Corporation to move forward only to the extent Dominion could prove that someone at Fox Corporation played a *direct role* in creating and publishing the challenged statements. *Fox Corp.*, 2022 WL 2229781, at \*9. The Court reiterated that ruling just this past December, explaining that mere allegations of corporate control over Fox News are not enough to hold Fox Corporation vicariously liable for all statements published by its subsidiary:

I am having an issue with your corporate control argument because I think I have already ruled on that. I am not going to let people pierce the corporate veil, so you might as well throw those experts out right now. If you want to pierce the corporate veil, you are in the wrong place. And, so, corporate control is going to be a touchy subject with this Judge. I have already gone through this.

Ex. J2, Motion for Consolidation Oral Argument Hearing Tr., at 96:10-20 (Dec. 21, 2022); *see also* Ex. J1, Motion to Dismiss Oral Argument Hearing Tr., at 20:15-21:4 (Mar. 15, 2022); *id.* at 6:17-8:8; *id.* at 45:4-10; Ex. J2, Motion for Consolidation Oral Argument Hearing Tr., at 101:13-102:5 (Dec. 21, 2022).

Accordingly, to prove its claims against Fox Corporation, Dominion must prove that someone at Fox Corporation played a direct role in creating and publishing a statement that Dominion challenges. *Fox Corp.*, 2022 WL 2229781, at \*9. And

Dominion must also prove that whoever did so undertook took those actions with the actual malice necessary to sustain a defamation claim. *See* Ex. J2, Motion for Consolidation Oral Argument Hearing Tr., at 101:13-102:5.

### **C. The Voluminous Discovery Record**

Since the Court issued its motion-to-dismiss opinion in the Fox Corporation case, Fox News and Fox Corporation have produced more than a million pages of discovery, including emails, texts, and instant messages from scores of custodians. And Dominion has deposed dozens of Fox News witnesses, including Fox News hosts, producers, and senior executives (including Fox News's CEO), numerous third parties, and Fox Corporation executives, including its CEO and its Chairman. Yet despite that mountain of discovery, Dominion has failed to produce a shred of evidence that anyone at Fox Corporation was directly involved in creating or publishing any of the statements Dominion challenges. That is not for lack of trying. Dominion repeatedly asked Fox News executives, hosts, and staff whether Fox Corporation employees played a role in the publication of the statements it challenges. The answer—every single time, for every single witness—was no. Written discovery confirms the same. Simply put, there is nothing in the record to support Dominion's only legally viable theory of liability against Fox Corporation.

**1. Fox News Hosts Uniformly Testified that Fox Corporation Did Not Play Any Role in Creating or Publishing Any of the Challenged Coverage.**

Fox News hosts uniformly testified that Fox Corporation did not play any role in publishing anything about Dominion.

For example, Jeanine Pirro testified:

Q. Did you ever speak with anyone at Fox Corporation about the content of your shows related to the 2020 presidential election?

A. Fox Corporation, no.

Q. Did you ever speak with anyone at Fox Corporation about the contents of your shows that contained allegations of potential fraud in the 2020 presidential election?

A. No.

Q. Did you ever speak with anyone at Fox Corporation about the plaintiffs in this case, U.S. Dominion, Incorporated, Dominion Voting Systems, Incorporated, and Dominion Voting Systems Corporation?

A. No, I did not.

Ex. E25, J. Pirro Dep. Tr., at 421:21-422:13.

Maria Bartiromo testified:

Q. [D]id you ever at any time ever talk to anybody at the parent corporation of Fox News called Fox Corporation? Did you ever talk to anyone at Fox Corporation at all about Dominion or the allegations being made about Dominion?

A. No, never.

Ex. E26, M. Bartiromo Dep. Tr., at 406:7-10.

Tucker Carlson testified:

Q. Did you ever communicate with Mr. Lachlan Murdoch in any way about claims or election fraud in the 2020 election?

A. Not that I recall.

Q. Did you ever speak with Mr. – or communicate with Mr. Murdoch in any mode or method about Dominion?

A. Not that I'm aware of.

Q. Or Sidney Powell?

A. Not that I'm aware of.

Q. Or Mike Lindell?

A. Not that I'm aware of.

\* \* \*

I can say with complete certainty, allowing for somehow maybe I forget it, but as I sit here now I can say with what I believe is complete certainty I did not discuss [whether Mike Lindell would come on his show] with the Murdochs. I can't imagine that I would have.

Ex. E27, T. Carlson Dep. Tr., at 165:15-166:1; 227:1-6; *see also* Ex. E28, J. Wells, Dep. Tr., at 13:16-14:18; 87:18-20 (Executive Producer for *Tucker Carlson Tonight* testifying that Rupert Murdoch never communicated “anything specific relating to a story, such as the 2020 election,” and never communicated about Sidney Powell with Rupert Murdoch, and that Lachlan Murdoch “doesn't get involved in direct editorial decisions.”).

And when Lou Dobbs was asked if “any of the Murdochs” ever directed him to have or not have any of the people who were leveling allegations against Dominion in the wake of the election on his show, Dobbs testified “No, that would not have happened.” Ex. E29, L. Dobbs Dep. Tr., at 96:22-23; *see also id.* at 98:24-99:11.

In sum, the Fox News hosts whose coverage Dominion challenges uniformly testified that they did not receive instructions from anyone at Fox Corporation, including Rupert or Lachlan Murdoch, regarding their coverage about Dominion. In fact, the answers Dominion got from hosts were so damaging to its case that Dominion apparently decided not to bother asking similar questions to other Fox News hosts. Dominion's summary judgment brief and the record are thus devoid of *any* testimony from *any* host supporting its dubious allegations that Fox Corporation played some direct role in creating or publishing any of the challenged statements.

**2. Fox Corporation Executives Similarly Testified that They Did Not Play Any Role In Publishing The Allegedly Defamatory Statements.**

Notably, Dominion did not even bother asking Rupert and Lachlan Murdoch whether they discussed Dominion with any Fox News hosts. But on redirect by Fox Corporation's attorney, Rupert Murdoch confirmed that he did not:

Q. [H]ave you ever, ever, at any time, ever talked to Fox host Maria Bartiromo about Dominion and vote fraud?

A. No.

Q. Have you ever talked to Fox host Lou Dobbs ever about Dominion and vote fraud?

A. I don't think I've ever met Mr. Dobbs.

Q. Okay. So if you haven't met him, you probably couldn't talk to him?

A. Right.

Q. Sir, have you ever talked to Fox host Judge Jeanine Pirro about Dominion and vote fraud?

A. No.

Q. Have you ever talked to Fox host Tucker Carlson about Dominion and vote fraud?



A. No.

Q. Have you ever talked to Fox host Pete Hegseth about Dominion and vote fraud?

A. No.

Q. Have you ever talked to Fox host Rachel Campos-Duffy about Dominion and vote fraud?

A. No.

Q. And have you ever talked to Fox host Will Cain about Dominion and vote fraud?

A. No.

Ex. E41, R. Murdoch Jan. 20, 2023 Dep. Tr., at 352:24-354:2.

Other Fox Corporation executives similarly offered uncontroverted testimony that they did not participate in publishing the allegedly defamatory statements. *See, e.g.*, Ex. E42, R. Shah Dep. Tr., at 364:20-365:10 (“Q. [D]id you ever have anything to do with the decision by Fox to ever air any of President Trump’s Dominion vote fraud related allegations? A. No, I did not. Q. [D]id you ever have anything to do with what Fox said on the air on any occasion when Fox was publishing Donald Trump’s Dominion-related allegations? A. No, I did not.”); *id.* at 377:10-15; Ex. E43, V. Dinh Dep. Tr., at 360:13-18 (“Q. Sir, did you have anything to do with the decision by Fox News to cover and air any of President Trump’s Dominion vote fraud allegations? A. No.”); *id.* at 47:12-48:18 (testifying that, before the Dominion litigation was filed, Fox Corporation’s board did not discuss Sidney Powell, and that before the Smartmatic litigation was filed in February 2021 Rudy Giuliani was not discussed at board meetings); *id.* at 198:8-13 (testifying that he did not “discuss

Sidney Powell with anyone at Fox News” until mid-December 2020); *id.* at 199:21-200:10 (testifying that he did not “discuss Rudolph Giuliani with anyone at Fox News” until mid-December 2020); *id.* at 260:21-24 (testifying that “[o]utside of this lawsuit” he had not discussed Dominion with Rupert or Lachlan Murdoch “at any time”); Ex. E44, P. Ryan Dep. Tr. 409:6-10 (“Q. [D]o you remember ever speaking about the plaintiff in this case, Dominion, with any person at Fox News or Fox Business? A. No.”); *id.* at 409:11-15 (“Q. [B]efore this lawsuit, do you remember ever speaking with anyone at Fox Corporation about [Dominion]? A. No.”).

**3. Fox News Executives and Employees Uniformly Testified that Fox Corporation Played No Role In Creating or Publishing any of the Challenged Coverage.**

Other Fox News witnesses confirmed that Fox Corporation played no role in creating or publishing the challenged coverage. None testified to the contrary, leaving Dominion with no evidence of any such involvement by Fox Corporation.

Suzanne Scott, the CEO of Fox News, testified:

Q. Did you talk about Sidney Powell with Mr. Murdoch?

A. No, not that I recall.

Q. Did you talk about Dominion at all with Mr. Murdoch?

A. I don’t remember ever talking to Rupert about Dominion, no.

Ex. E32, S. Scott Dep. Tr., at 328:8-11.

Alan Komissarroff, Senior Vice President of News and Politics at Fox News at the relevant time testified:

Q. Do you ever recall Rupert Murdoch telling you to cover the allegations of Sidney Powell?

A. No.

Q. Do you ever recall Rupert Murdoch telling you to cover the allegations of Rudy Giuliani?

A. No.

Q. Do you ever recall Rupert Murdoch telling you to cover the allegations about -- made by Donald Trump with respect to Dominion voting machines?

A. No.

Q. Same with Lachlan Murdoch, do you ever recall Lachlan Murdoch telling you to cover the allegations of Sidney Powell?

A. No.

Q. Do you ever recall Lachlan Murdoch telling you to cover the allegations of Rudy Giuliani?

A. No.

Q. Do you ever recall Lachlan Murdoch telling you to cover the allegations about Dominion voting machines made by Donald Trump?

A. No.

Ex. E33, A. Komissaroff Dep. Tr., at 208:10-209:5.

David Clark, Senior Vice President for Weekend News and Programming for Fox News, testified that he could not recall discussing Sidney Powell or Rudy Giuliani's appearance on November 15th with either Rupert or Lachlan Murdoch.

Ex. E34, D. Clark Dep. Tr., at 298:9-300:23. Meade Cooper, Executive Vice President of Primetime Programming for Fox News, testified that no one at Fox Corporation instructed her to cover specific topics during the relevant period, and for good measure that she never even conversed about what topics should be covered with either Rupert or Lachlan Murdoch. Ex. E35, M. Cooper Dep. Tr., at 282:4-23.

Gary Schreier, who at the relevant time was the Senior Vice President of Programming for the Fox Business Network, testified that neither Rupert nor Lachlan Murdoch ever spoke to him about Sidney Powell or Rudy Giuliani. Ex. E36, G. Schreier Dep. Tr., at 252:20-253:1.

Up and down the line, there is thus no testimony *at all* to support Dominion's direct-participation theory.

**4. The Written Discovery Record Contains No Evidence that Fox Corporation Played Any Role—Direct or Otherwise—In Creating or Publishing Any of the Challenged Coverage.**

The written discovery responses likewise contain no evidence to support Dominion's claim that Fox Corporation directed the creation or publication of the challenged coverage. Indeed, the written discovery affirmatively refutes that claim. Fox Corporation's sworn interrogatory responses state that it is unaware of any Fox Corporation personnel or employees during the relevant period who played a role in drafting, editing, producing, or contributing to any of the content Dominion challenges. Ex. K1, Defendant Fox Corporation's Supplemental Responses and Objections to Plaintiffs' Second Set of Interrogatories, Interrogatory Nos. 1–3, 7, 9, 15, 29, 31, 33, 35, 37, 39, 45, 47. Likewise, Fox News's sworn interrogatory responses state that no one from Fox Corporation drafted or edited any segment or interview on any of the broadcasts or social media posts Dominion challenges. Ex. K2, Defendant Fox News Network, LLC's Responses and Objections to Plaintiffs'

First Set of Interrogatories, Interrogatory No. 3. Dominion does not cite any written discovery to the contrary in its summary judgment brief.

### **ARGUMENT**

As this Court held in its motion-to-dismiss opinion, to hold Fox Corporation liable for defamation based on statements made on various Fox News programs, Dominion must prove that Fox Corporation’s employees—indeed, per Dominion’s own allegations, Rupert and Lachlan Murdoch in particular—played an “affirmative role in the preparation or editing of” each of the challenged statements or directed Fox News to publish them. *Gaeta v. N.Y. News Inc.*, 95 A.D.2d 315, 328 (N.Y. App. Div. 1983), *rev’d on other grounds*, 465 N.E.2d 802 (1984). After all, “a defamation claim cannot survive without an allegation that defendants participated in the creation or the publication of the statements at issue.” *Fox Corp.*, 2022 WL 2229781, at \*8 (quoting *Treppel v. Biovail Corp.*, 2005 WL 2086339, at \*3 (S.D.N.Y. Aug. 30, 2005)). Moreover, Dominion would have to prove that “the state of mind required for actual malice” was “brought home to” whomever at Fox Corporation purportedly had “responsibility for the publication” of each challenged statement. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 287 (1964). The voluminous discovery in this case confirms what Fox Corporation has said all along: Neither Rupert nor Lachlan Murdoch nor anyone else at Fox Corporation played any role

whatsoever in creating or publishing any of the statements Dominion challenges. Fox Corporation is entitled to summary judgment on Dominion's claims.

**I. Fox Corporation Did Not Participate or Have Any Role In the Creation or Publication of the Challenged Statements.**

Dominion's motion all but admits that no one at Fox Corporation participated in the creation or publication of the challenged statements. Dominion lists the names of individuals it thinks are "responsible employees" for *Sunday Morning Futures*, *Lou Dobbs Tonight*, *Justice with Judge Jeanine*, *Fox & Friends*, *Hannity*, and *Tucker Carlson Tonight*. Dom.MSJ.117-144. Not once does it list anyone from Fox Corporation. That is not because Dominion was being particularly judicious with the people it chose to name. Dominion lists seven to nine "responsible employees" for each show, and its lists include everyone from hosts to producers to supervisors to high-level executives and Fox News's CEO. While those lists are vastly overbroad, it is telling that even Dominion could not bring itself to claim that any Fox Corporation employee was "responsible" for any of the challenged content. Indeed, Fox Corporation largely appears only as an afterthought in Dominion's brief. And for good reason: No Fox Corporation employee played any role in the creation or the publication of any of the statements that Dominion challenges.

**A. The Evidence Uniformly Demonstrates that Fox Corporation Did Not Play Any Role in the Creation or Publication of the Challenged Statements.**

The voluminous record that has been compiled over more than a year of discovery proves as a matter of law that Fox Corporation did not play any role in the creation or publication of any of the statements Dominion challenges. In fact, Dominion did not even bother to ask the Fox Corporation executives at the heart of its allegations whether either of them discussed Dominion with any Fox News hosts. And on redirect, Rupert Murdoch affirmatively testified under oath that he never discussed Dominion or voter fraud with any of the Fox News hosts whose programming Dominion has challenged. Ex. E41, R. Murdoch Jan. 20, 2023 Dep. Tr., at 352:24-354:2.

The hosts themselves confirmed as much. When asked whether he “ever receive[d] instructions or guidance from executives at Fox about who you could or could not have on Lou Dobbs Tonight as a guest,” Dobbs testified “no.” Ex. E29, L. Dobbs Dep. Tr., at 94:20-25. When asked if “any of the Murdochs” would have given him direction or guidance on who to book, he unequivocally stated: “No, that would not have happened.” *Id.* at 96:22-23. When Dominion’s lawyer tried again to ask whether Dobbs was “given any instructions or guidance, directly or indirectly, from Fox executives about the topic of election fraud relating to the 2020 election,” Dobbs again answered: “Not at all.” *Id.* at 99:24-100:3.

Other hosts expressed similar sentiments. When asked whether she “ever sp[o]k[e] with anyone at Fox Corporation about the content of your shows related to the 2020 presidential election,” Pirro answered: “Fox Corporation, no.” Ex. E25, J. Pirro Dep. Tr., at 421:21-25. Likewise, when asked whether she “ever sp[o]k[e] with anyone at Fox Corporation about the contents of your shows that contained allegations of potential fraud in the 2020 presidential election,” Pirro answered: “No.” *Id.* at 422:2-7. And when asked whether she “ever sp[o]k[e] with anyone at Fox Corporation about the plaintiffs in this case, U.S. Dominion, Incorporated, Dominion Voting Systems, Incorporated, and Dominion Voting Systems Corporation,” Pirro again answered: “No, I did not.” *Id.* at 422:8-13.

Bartiromo testified that if her “bosses Suzanne Scott, Rupert Murdoch, Lachlan Murdoch” had given her “a directive about having a person – about having or not having a particular guest on your show,” she would have listened. But she confirmed that “they never said anything like that.” Ex. E26, M. Bartiromo Dep. Tr., at 259:24-260:11. Dominion’s lawyer retorted: “But you understand that if they did exercise—if they did tell you to do something, you would follow their instruction?” *Id.* at 260:12-14. Bartiromo responded: “Well, it’s my boss, but they—they’ve never done that.” *Id.* at 260:15-16. Later in her deposition, when asked whether she “at any time ever talk[ed] to anybody at the parent corporation of Fox News called Fox Corporation ... about Dominion or the allegations being made



about Dominion,” she answered: “No never.” *Id.* at 406:6-10. She then stated unequivocally: “I never discussed Dominion with Rupert, Lachlan or Suzanne Scott.” *Id.* at 406:16-17.

Similarly, when asked whether anyone from the “Murdoch family” spoke to him about his on-air comments casting doubt on Powell’s claims, Carlson testified: “I can say unequivocally that no one at Fox tried to force me to take a specific line on Sidney Powell or any other feature of the 2020 election.” Ex. E27, T. Carlson Dep. Tr., at 114:2-21. “I made these judgments independently and I think the record will reflect that because it’s true.” *Id.* at 114:22-23.

When asked: “Did you ever communicate with Mr. Lachlan Murdoch in any way about claims or election fraud in the 2020 election,” Carlson stated: “Not that I recall.” *Id.* at 165:15-18. Likewise, Carlson testified that he did not recall communicating with anyone at Fox Corporation “about Dominion,” “Sidney Powell,” or “Mike Lindell.” *Id.* at 165:19-22; 165:23-24; 165:25-166:1. When asked whether he discussed booking Lindell on his show with “any of the Murdoch family,” Carlson testified: “I can say with complete certainty, allowing for somehow maybe I forget it, but as I sit here now I can say with what I believe is complete certainty I did not discuss [whether Mike Lindell would come on his show] with the Murdochs. I can’t imagine that I would have.” *Id.* at 165:15-166:1, 227:1-6. Even Scott, Fox News’s CEO, who herself was not directly involved in creating or

publishing the challenged statements, testified: “Q. Did you talk about Dominion at all with Mr. Murdoch? A. I don’t remember ever talking to Rupert about Dominion, no.” Ex. E32, S. Scott Dep. Tr., at 328:8-11.

In short, the record is completely devoid of any evidence that Rupert or Lachlan Murdoch or anyone else at Fox Corporation had a role in creating or publishing the challenged statements. That compels summary judgment in Fox Corporation’s favor and forecloses Dominion’s motion for summary judgment in its favor.

**B. Dominion’s Evidence of Occasional Communications with Fox News Unrelated to Dominion Is Woefully Insufficient.**

To the extent Dominion even tries to prove that anyone at Fox Corporation participated in the creation or publication of the challenged statements, its efforts come up far short. Dominion tries to make something of the fact that Rupert and Lachlan Murdoch “at times” attended editorial meetings. Dom.MSJ.16-117 (asserting that Dominion’s discussion of editorial meetings “demonstrates editorial responsibility for at least Rupert and Lachlan Murdoch”). But not a single witness that attended those meetings testified that they ever spoke with either Rupert or Lachlan Murdoch about Dominion or the challenged statements. To the contrary, several Fox News employees testified that neither Rupert nor Lachlan Murdoch ever said *anything* about Fox News’s coverage of the President’s allegations at any

editorial meeting. Indeed, not a single witness that attended one of these meetings recalls Rupert or Lachlan Murdoch ever being present at a meeting where Dominion or the challenged statements were discussed. *See, e.g.*, Ex. E45, G. Schreier Dep. Tr., at 56:23-57:16 (testifying that he does not recall either Rupert or Lachlan Murdoch saying “anything about Fox’s or Fox Business’s coverage of the 2020 election during any of the daily editorial meetings”); Ex. E46, P. Berry Dep. Tr., at 109:8-111:18 (“Q. In those editorial meetings, do you recall Dominion ever coming up? A. No.”); Ex. E47, S. Scott Dep. Tr., at 328:22-329:20 (“Q. So when Dominion or Sidney Powell or Rudy Giuliani would come up at the editorial meetings, [Lachlan and Rupert Murdoch] would be there for that discussion, potentially? A. You, know I don’t remember that – Dominion specifically ever coming up at an editorial meeting. . . . I don’t ever once remember [DC editorial executive Bill Sammon] bringing up Dominion at one of these editorial meetings or our editorial leadership bringing it up at a meeting . . . There were dozens and – hundreds of stories around the election, and Dominion was one small piece of an unprecedented time in American history”); Ex. E48, J. Wallace Dep. Tr., at 89:14-23 (testifying that he does not recall anyone raising a concern about Sidney Powell or Mike Lindell at the editorial meetings).

Even if Fox News employees discussed Dominion at any meetings that Rupert or Lachlan Murdoch attended (and Dominion does not present any evidence that

they did), that would not begin to sustain a finding that the Murdochs were responsible for the publication of any of the challenged statements. There is no evidence, written or testimonial, that indicates that the Murdochs directed anyone at Fox News to say *anything* related to Dominion. To the contrary, Fox News hosts and executives uniformly testified that Lachlan and Rupert Murdoch did not discuss Dominion with them—testimony buttressed by Rupert’s undisputed testimony that he never discussed Dominion and voter fraud with any of the accused hosts. *Supra* Statement of Facts C1-3. All Dominion can muster is that, “at times” Lachlan and Rupert Murdoch attended meetings where there is no evidence that Dominion was even discussed. Dom.MSJ.102.

Dominion’s reliance on Fox News’s responses to Dominion’s requests for admissions suffers from all the same flaws. Dom.MSJ.102. All those admissions say is that Rupert and Lachlan Murdoch “attended at least some of the twice daily meetings” where *Mornings with Maria*, *Sunday Morning Futures with Maria Bartiromo*, *Tucker Carlson Tonight*, *Lou Dobbs Tonight*, *Hannity*, *Justice with Judge Jeanine*, and *Fox & Friends* were sometimes discussed. Dominion did not ask whether, and Fox Corporation certainly did not admit that, Rupert and Lachlan Murdoch attended any editorial meetings where the specific airings of those shows during which challenged statements were made were discussed. *Contra*

Dom.MSJ.102 (citing RFA No. 27, 43).<sup>2</sup> Dominion’s effort to mischaracterize that limited admission fails.<sup>3</sup>

Finally, Dominion points to occasional conversations between Fox Corporation executives and Fox News executives about content on Fox News programs. *See, e.g.,* Dom.MSJ.114 (referencing Lachlan Murdoch feedback on Fox News through Scott). But that evidence lends no support to its argument that Fox Corporation directed Fox News to publish any or all of the 115 statements it challenges, as there is no evidence that any of those conversations involved Dominion. Indeed, that testimony does not even support Dominion’s theory that Fox Corporation exercised control over Fox News content *generally*, let alone that it exercised control over the

<sup>2</sup> In particular, Dominion requested that Fox Corporation admit that Rupert and Lachlan Murdoch attended “some” editorial meetings “related to some or all of the Fox accused programs.” Dominion defined the accused programs not by reference to programs that ran on specific dates, but simply by reference to any show on which Dominion claims any defamatory statement was ever made—*i.e., Mornings with Maria, Sunday Morning Futures, Tucker Carlson Tonight, Lou Dobbs Tonight, Hannity, Justice with Judge Jeanine, and Fox & Friends*. Thus, Fox Corporation would be required to admit the request if it was possible that Rupert or Lachlan Murdoch *ever* attended *any* meeting that discussed *any* of those six shows.

<sup>3</sup> Dominion also cites Responses to Nos. 35 and 51, but neither of those responses has anything to do with editorial meetings. They are simple admissions that Lachlan and Rupert Murdoch had “at least some communications” with Suzanne Scott “regarding content” of *Mornings with Maria, Sunday Morning Futures with Maria Bartiromo, Tucker Carlson Tonight, Lou Dobbs Tonight, Hannity, Justice with Judge Jeanine, and Fox & Friends*. They did not ask whether any of those communications were about Dominion, and, as detailed extensively in this brief, there is no evidence that they were.

specific statements Dominion has challenged. To be sure, Fox Corporation executives make suggestions about content at times. But both Lachlan Murdoch and Suzanne Scott testified that, while Scott would of course consider any suggestions from the Murdochs, she was never bound by them. *See* Ex. E49, L. Murdoch Dep. Tr., at 78:21-79:6 (testifying that “I would hope she would consider [the suggestion]. She doesn’t have to put it up. She’s the responsible executive.”); Ex. E32, S. Scott Dep. Tr., at 35:19:-36:5 (“Rupert and Lachlan never tell me to do anything. They are extremely respectful of not just myself but our business, but that’s not to say that from time to time they don’t make suggestions . . . they make suggestions, they don’t tell me what to do.”); *id.* at 93:6-18 (“I would say if I get an email from Rupert or Lachlan, I would obviously read it and take it seriously, but at the same time, I make my own decisions that are in my area . . . it’s just a suggestion.”); *id.* at 102:4-16 (“[N]ever in my experience working with [Lachlan Murdoch] has he presented an idea as a hard no. There is [sic] suggestions, but not – I would never use the phrase ‘hard no’”).<sup>4</sup>

<sup>4</sup> Dominion references (at 18, 27) Fox Corporation Senior Vice President Raj Shah’s commentary on Twitter reactions to Fox News’s coverage of the election generally. That is obviously not sufficient to demonstrate that Fox Corporation participated in creating or publishing the challenged statements. Dominion’s reference to an email between Shah and Fox Corporation Chief Legal and Policy Officer Viet Dinh (at 41, 150) is similarly entirely unrelated to a statement challenged by Dominion, and in fact supports the conclusion that neither Mr. Shah nor Mr. Dinh played any role in the creation of any challenged statement.

In fact, the record is filled with testimony demonstrating that editorial decisions are generally made by Fox News employees:

- “I think hosts and journalists have a very tough job, and I think if you micromanage them, if you come out and criticize them . . . I think it’s very tough for them. . . . So it’s very hard for someone who’s not in the editorial, not responsible for the editorial management to come in at a board level or senior executive level and endorse or not endorse any particular show or comment. It would be, frankly inappropriate to do so.” Ex. E40, L. Murdoch Dep. Tr., at 60:16-61:13.
- “I think the editorial structure or producers through the executives at Fox News, that’s the appropriate place for them to manage the best they can their reporters, their journalists, their producers and their hosts. . . . I’m not the CEO of Fox News. I’m not responsible for the editorial on Fox News. I don’t make editorial decisions on Fox News.” *Id.* at 63:3-8.
- “I trust these people. I do not interfere in that sort of thing.” Ex. E50, R. Murdoch Jan 19, 2023 Dep. Tr., at 73:24-74:6.
- “Q. You are involved in all major decisions, are you not? A. Depends how you describe major decisions, but not really. . . . It depends on what – not in day-to-day programming decisions. Q. You’re involved in determining who should host shows? A. No.” Ex. E41 R. Murdoch Jan 20, 2023 Dep. Tr., at 169:4-22.
- “Q. It’s not a decision to invite them on the air? A. Well, down the line. There are directors and producers in every show, and they are putting together these shows.” Ex. E50, R. Murdoch Jan 19, 2023 Dep. Tr., at 143:16-20.
- Testimony that, as Executive Editor of Fox News, Wallace had “ultimate editorial oversight for the content broadcast on Fox News about the 2020 election.” Ex. E38, J. Wallace Dep. Tr., at 171:6-13.

- “Q. And sir, during that time frame, you could have said to Ms. Scott, ‘Stop hosting Sidney Powell?’ A. I could have, but I do not run Fox News that way. I appointed Ms. Scott to the job. . . And I delegate everything to her.” Ex. E50, R. Murdoch Jan. 19, 2023 Dep. Tr., at 145:8-18.

Thus, far from providing the kind of overwhelming evidence needed to prove that it is entitled to summary judgment, Dominion fails to produce *any* evidence to support its baseless allegation that Fox Corporation executives exercised control over the creation or publication of the statements it challenges.

**C. Dominion’s Suggestion that Fox Corporation Was Responsible for the Challenged Statements Because It Could Have Stopped Their Publication Is Foreclosed By Law.**

Unable to identify any evidence that any Fox Corporation executive *actually* exercised control over the creation or publication of any of the challenged statements, Dominion suggests that it is enough that Fox Corporation executives *could* have hypothetically exercised such control. By Dominion’s telling, because various Fox Corporation executives purportedly could have exercised control to *stop* the challenged statements from running, Fox Corporation can be held liable for their failure to do so.

That is not how defamation law works. “To find that a defendant ‘directed’ or ‘participated in’ publication requires, *at very least, evidence of some affirmative action* on the part of the defendant.” *Ertel v. Patriot-News Co.*, 674 A.2d 1038, 1043 (Pa. 1996) (emphasis added). “[M]erely fail[ing] to hinder its publication” is not



enough. *Id.* at 1044 (affirming trial court’s entry of summary judgment in favor of defendant where reporter who published challenged article testified only that the defendant “didn’t say don’t print it”). Dominion cannot survive summary judgment, much less prevail on its own summary judgment motion, by arguing that Fox Corporation executives could or should have done something to prevent the publication of statements that Dominion has not even proven any executive knew existed. Not only is that theory foreclosed by settled defamation law, but a theory that purports to impose liability on a parent based on mere *capacity* to exert control over a subsidiary would obliterate the concept of corporate separateness. *See* Fox Corp. MSJ 6-7 (citing Motion to Dismiss Oral Argument Hearing Tr., at 20:15-21:4, 6:17-8:8, 45:4-10 (Mar. 15, 2022); Motion for Consolidation Oral Argument Hearing Tr., at 96:9-20, 101:13-102:5 (Dec. 21, 2022); *Fox Corp.*, 2022 WL 2229781, at \*9).

**II. Dominion Has Not Produced Anything Close to Clear and Convincing Evidence that Anyone At Fox Corporation Published Any Challenged Statement With Actual Malice.**

Even assuming (contrary to all the record evidence) that Dominion could somehow establish that someone at Fox Corporation directed Fox News to publish the 115 statements it challenges, it has failed to muster clear and convincing evidence that any such person published those statements with knowledge that the President’s allegations about Dominion were false or while harboring serious doubts

about their truth. All Dominion points to are a smattering of communications among high-level executives discussing election-fraud allegations generally, with no specific connection to any of the statements it challenges. Indeed, some of those communications came *before* the allegations that Dominion challenges even surfaced.<sup>5</sup> Others came long after the December certification, after which Fox News hosts stopped inviting Giuliani or Powell onto their shows, and thus say nothing about what those involved knew or thought at the time of the challenged coverage.<sup>6</sup> Still others just express colloquial views like that the President’s allegations were “crazy stuff,” which, given their extraordinary nature, is a hardly an admission that they were *false*.<sup>7</sup>

<sup>5</sup> See, e.g., Dom.MSJ.14, 20-21, 22, 114 (citing Ex. 151) (November 6 exchange between Rupert Murdoch and Suzanne Scott that was forwarded to Meade Cooper regarding how it would be “very hard to credibly cry foul everywhere”); Dom.MSJ.150 (citing Ex. 341) (November 6 exchange between Rupert Murdoch and Suzanne Scott expressing opinion that it was “really bad” that Giuliani was advising Trump).

<sup>6</sup> See, e.g., Dom.MSJ.44 (citing Ex. 277) (January 5 exchange between Rupert Murdoch and Suzanne Scott forwarded to Cooper regarding suggestions that various Fox News hosts make statements to help “stop the Trump myth that the election [was] stolen”); Dom.MSJ.13 (citing Ex. 179 and 180) (January 21 exchanges between Rupert Murdoch and Suzanne Scott reflecting on potential impact of election-fraud coverage on January 6).

<sup>7</sup> See, e.g., Dom.MSJ.13, 114 (citing Ex. 181) (November 19 exchange between Rupert Murdoch and Suzanne Scott describing Giuliani’s press conference as “crazy stuff”).

Dominion thus resorts to arguing that Fox Corporation had an incentive to defame Dominion because it wanted to please the President and hold off upstarts like Newsmax.<sup>8</sup> That theory makes no sense whatsoever given that multiple Fox News hosts—including some of its most prominent hosts—openly cast doubt on the President’s allegations on air.<sup>9</sup> And the Supreme Court has squarely held that mere allegations “that the defendant published the defamatory material in order to increase its profits” cannot “suffice to prove actual malice.” *Harte-Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 667 (1989). As the Supreme Court admonished, “[i]f a profit motive could somehow strip communications of the otherwise available constitutional protection [of actual malice], our cases from *New York Times* to *Hustler Magazine* would be little more than empty vessels.” *Id.* at 667.

In all events, discovery has squarely undermined Dominion’s theory. Fox News hosts did not invite Giuliani and Powell on their shows because they wanted to boost ratings despite knowing the allegations were false. They invited them to air their allegations because they thought the President’s allegations were the most newsworthy story of the day. *See* FNN.MSJ.156-57.

<sup>8</sup> *See e.g.*, Dom.MSJ 23 (citing Ex. 295) (exchange between Rupert Murdoch and Suzanne Scott forwarded to Jay Wallace regarding CNN ratings); Dom.MSJ 34 (citing Ex. 239) (exchange between Rupert Murdoch and Suzanne Scott regarding Wall Street Journal article on Newsmax).

<sup>9</sup> *See, e.g.*, FNN.MSJ.28-33 (collecting examples).

The record also undermines the conclusion that Fox News had a financial motive to lie. After all, a post-election decline in ratings and viewership was hardly alarming news; such declines are commonplace after any election, and they routinely prove temporary. Dom.MSJ.Ex.113, Dorrego 30(b)(6) Dep. Tr. 258:23-259:5, 287:18-289:1, 297:8-298:11, 346:5-12; Dom.MSJ.Ex.102 Briganti Dep. Tr. 79:21-80:3, 130:6-7; Dom.MSJ.Ex.108 Cooper Dep. Tr. 171:8-13. Moreover, discovery has confirmed that ratings did not drive revenues. As Fox News's Chief Financial Officer testified, affiliate revenues (*i.e.*, revenues received from pay TV providers like Comcast or Charter to carry Fox News and the Fox Business Network) make up the majority of Fox News's revenue, and those long-term deals would not have been affected by Fox News's coverage of the President's allegations. Dom.MSJ.Ex.113, Dorrego 30(b)(6) Dep. Tr. 31:20-32:9, 237:6-7. Fox Corporation's Chief Legal and Policy Officer Viet Dinh likewise explained, "I don't think we were very concerned" about the drop in ratings "because viewership does not define Fox News's revenue.

[REDACTED]

[REDACTED]

Ex. E43, V. Dinh Dep. Tr., at 379:3-18.

Accordingly, as Fox Corporation's CEO Lachlan Murdoch testified, short-term commercial interests do not dictate what is published and broadcast on Fox News. Dom.MSJ.Ex.130, L. Murdoch Dep. Tr. 31:4-31:25. And while Dominion

emphasizes that Lindell’s MyPillow was Fox News’s top advertising spender, Dom.MSJ.157, Fox News’s Chief Financial Officer testified that MyPillow constituted less than 5% of Fox News’s revenue base, and that it would not make sense to protect that 5% if it meant putting the other 95% at risk. Ex. E51, J. Dorrego Dep. Tr., at 20:6-21:3. In fact, Gary Schreier testified that, to the extent ratings affected revenues at all, it would have been better for Bartiromo *not* to cover the President’s allegations and to focus on her core business coverage rather than “divisive political things.” Dom.MSJ.Ex.142, Schreier Dep. Tr. 83:18-84:7. Fox Corporation executives also testified that they were not overly concerned about Newsmax and did not consider it a significant threat. Ex. E49, L. Murdoch Dep. Tr., at 218:18-219:2 (testifying that “we certainly saw Newsmax’s ratings increase . . . from my perspective it was something absolutely we were watching but it’s how we compete with them over the long term”); *id.* at 222:17-223:4 (“Q. Do you remember that even though Fox News was concerned about Newsmax in November 2020, you wanted to avoid seeming concerned about it publicly? A. Possibly, but I think we were concerned in the short term, or I was concerned, to speak for myself, but not in the long term. I think we felt that the brand was strong enough, I know I felt that the brand was strong enough and this would be a temporary dip and we would get through it”); Ex. E50, R. Murdoch Jan. 19, 2023 Dep. Tr., at 68:10-17 (“Q. [Y]ou were aware that a lot of the viewers didn’t just go away; they were going to rival

networks like Newsmax? A. Not really, no. . . I would say not in significant numbers.”).

If Dominion really wants to try to prove that Fox Corporation executives instructed some small subset of Fox News hosts to defame Dominion in hopes that doing so would increase viewership, then Dominion must produce some evidence that that actually happened. Unsurprisingly, Dominion has identified exactly nothing substantiating that fanciful theory.

### **CONCLUSION**

For these reasons, the Court should deny Dominion’s motion for summary judgment and grant Fox Corporation’s motion for summary judgment.

OF COUNSEL:

Dan K. Webb  
Matthew R. Carter  
WINSTON & STRAWN LLP  
35 W. Wacker Drive  
Chicago, IL 60601-9703  
(312) 558-5600

Paul D. Clement  
Erin E. Murphy  
CLEMENT & MURPHY, PLLC  
706 Duke Street  
Alexandria, VA 22314  
(202) 742-8900

Scott A. Keller  
LEHOTSKY KELLER LLP  
200 Massachusetts Avenue NW  
Washington, D.C. 20001  
(512) 693-8350

Eric M. George  
Katherine A. Petti  
ELLIS GEORGE CIPOLLONE  
O'BRIEN ANNAGUEY LLP  
2121 Avenue of the Stars, 30<sup>th</sup> Floor  
Los Angeles, CA 90067  
(310) 274-7100

Dated: February 8, 2023

/s/ Blake Rohrbacher

Blake Rohrbacher (#4750)  
Katharine L. Mowery (#5629)  
Angela Lam (#6431)  
RICHARDS, LAYTON & FINGER, P.A.  
920 North King Street  
Wilmington, DE 19801  
(302) 651-7700

*Attorneys for Defendant Fox Corporation*

**CERTIFICATE OF SERVICE**

I, Katherine L. Mowery, hereby certify that on February 27, 2023, I caused a copy of the *Public Version of Defendant Fox Corporation's Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment* to be filed and served via File & ServeXpress upon the following counsel of record:

Brian E. Farnan  
Michael J. Farnan  
Farnan LLP  
919 N. Market St., 12th Floor  
Wilmington, DE 19801  
(302) 777-0300

/s/ Katharine L. Mowery  
Katharine L. Mowery (#5629)