

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

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
REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

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

PRELIMINARY STATEMENT

Dominion commenced this lawsuit on the theory that “Fox Corporation executives such as Rupert and Lachlan Murdoch . . . chose to publish and broadcast the defamatory statements about Dominion across Fox.” Complaint ¶166. This Court then permitted wide-ranging discovery all the way up to the very highest levels of Fox Corporation based on Dominion’s assurances that it could prove “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). Now that discovery has closed, Dominion has changed theories altogether. Unable to identify *any* evidence that Rupert or Lachlan Murdoch—or anyone else at Fox Corporation—played a “direct role in the creation and publication of” *any* of the statements it challenges, Dominion now claims that Fox Corporation is on the hook for statements published by its subsidiary simply because it did not intervene to stop them from airing. That theory has no basis in defamation law and would vitiate bedrock corporate separateness rules. This Court should reject Dominion’s latest attempt to end-run around basic corporate-law principles. Fox Corporation is entitled to summary judgment.

ARGUMENT

I. Dominion Has Produced No Evidence That Anyone At Fox Corporation Participated In The Creation Or Publication Of Any Of The Challenged Statements.

This Court observed from the very start of Dominion’s lawsuit against Fox Corporation that Dominion’s “pleadings come 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 parties have addressed various theories of liability to try to make sense of Dominion’s highly unusual defamation lawsuit against a corporate parent, including theories of direct liability, agency liability, and veil-piercing. This Court has already rejected Dominion’s agency and veil-piercing theories. *Id.*; *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 96:10-20 (Dec. 21, 2022); *id.* at 101:13-102:5. Dominion has now failed to present any evidence to support its surviving direct-liability theory.

In fact, the voluminous record that has been compiled over more than a year of discovery, both from Fox News and from Fox Corporation, confirms what Fox

Corporation has said all along: Neither Rupert Murdoch, nor Lachlan Murdoch, nor anyone else at Fox Corporation played any role in creating or publishing any of the statements Dominion challenges. Revealingly, after running into one dead-end after another in questioning Fox News witnesses, ***Dominion did not even bother to ask*** the two Fox Corporation executives at the heart of its allegations whether either of them discussed Dominion with any Fox News hosts. Nevertheless, on redirect, Rupert Murdoch confirmed under oath that he never even discussed Dominion with any of the Fox News hosts whose programming Dominion has challenged. Ex. E41, R. Murdoch Jan. 20, 2023 Dep Tr. 352:24-354:2. The rest of the testimony of Fox Corporation executives was to the same effect. *See* Ex. E43, V. Dinh Dep. Tr. 360:7-18 (testifying he had nothing to do with any decisions to air anything about Dominion); Ex. E42, R. Shah Dep. Tr. 364:12-365:3 (same); Ex. E52, P. Ryan Dep. Tr. 408:21-409:5 (“Q. During that time, have you ever had any involvement in directing content on Fox News Network or Fox Business Network? A. No. Q. During that time, are you aware of any other Fox Corp Board member or Fox Corp executive directing any content on Fox News or Fox Business? A. I’m not, no.”). And as explained in Fox Corporation’s other summary judgment briefs, testimony from Fox News producers, hosts, and executives likewise confirms that no Fox

Corporation employee had played an affirmative role in the statements Dominion challenges. FoxCorp.MSJ.8-26; FoxCorp.Opp.8-21.¹

That is the end of Dominion's case. *In re Cable News Network & Time Mag. "Operation Tailwind" Litig.*, 2006 WL 2711744, at *2 (N.D. Cal. Sept. 21, 2006) ("Time Warner, Inc. was the ultimate parent company of Defendant Time, Inc. when the article was published... There is no evidence that Time Warner... directed or participated in the publication of the reports at issue... Accordingly, the Court will grant summary judgment for Defendant[] Time Warner."). Dominion cannot escape summary judgment by simply asserting, and only through implication to boot, that all of these witnesses are lying. *See, e.g., Dyer v. MacDougall*, 201 F.2d 265, 269 (2d Cir. 1952); *accord Springer v. Durflinger*, 518 F.3d 479, 484 (7th Cir. 2008) ("[W]hen challenges to witness' credibility are *all* that a plaintiff relies on, and he

¹ The closest Dominion comes to even trying to connect anyone at Fox Corporation to any challenged statement is to note that Raj Shah knew that Tucker Carlson was going to have Mike Lindell on his January 26 broadcast. Ex.605, Shah 310:19-23. But Shah testified that he does not have any editorial functions; he was given a heads up because his role is public relations. Nor was Shah involved in the decision to put Lindell on air. *Id.* 366:2-6. And in all events, Shah testified that he believed Carlson's January 26 show would be about "cancel culture." *Id.* 313:1-18. And contemporaneous emails confirm as much. Ex. I17 ("Topic: Cancel culture comes for "MyPillow." Some retailers have cut ties, and Mike Lindell no longer has a voice on social media. Again: All voices matter. Guest: Mike Lindell, My Pillow CEO").

has shown no independent facts—no proof—to support his claims, summary judgment in favor of the defendant is proper.”).

II. Dominion’s Defamation-By-Omission Theory Is Foreclosed By Law.

Bereft of any evidence to support its only legally viable theory, Dominion tries to rewrite the law. Indeed, while Dominion hinted at shifting its strategy in its opening brief, its opposition brief drops all subtlety and urges this Court to impose defamation liability on Fox Corporation without regard to whether anyone there “played a *direct role* in the creation and publication of the statements at issue.” *US Dominion*, 2022 WL 2229781, at *9. According to Dominion, it is enough that someone at Fox Corporation theoretically *might have* been able to step in and prevent the challenged statements from airing. Even Dominion’s choice of headings is telling: “Fox Corporation Executives *Allowed* the Defamatory Broadcasts,” Dom.Opp.143 (emphasis added); “Responsibility Extends to Any Person In the Chain of Command Who Participates in the Publication of the Defamatory Statements, Including By Knowingly *Allowing* Them to Occur,” Dom.Opp.131 (emphasis added). Those are claims not that Fox Corporation “crafted,” “directed,” or even “participated” in the challenged statements, but that Fox Corporation “allowed” them to air by failing to intervene.

Dominion repeats that same defamation-via-omission theory for every Fox Corporation executive it discusses. Rupert Murdoch is purportedly responsible for all 115 statements it challenges because “[h]e could have stopped FNN’s coverage.” Dom.Opp.150; *see also* Dom.Opp.33, 37 (similar). Lachlan Murdoch is purportedly responsible because he “nevertheless allowed FNN to continue broadcasting.” Dom.Opp.161. Viet Dinh is purportedly responsible because he “permitt[ed] the broadcasts to air,” Dom.Opp.162, and failed to “order shows not to have particular guests.” Dom.Opp.153. Raj Shah, an executive in charge of public relations matters who has no editorial role at all, is purportedly responsible because he “sat on his ability to intervene” and “did nothing to stop [Tucker] Carlson from featuring [Mike] Lindell on his program.” Dom.Opp.157. Dominion also says that Fox Corporation should be liable because Rupert Murdoch and Lachlan Murdoch “have the authority to direct FNN to make retractions” but did not do so, or “could have prevented rebroadcasts or prohibited Powell, Giuliani, and Lindell from appearing on air or told Scott that Fox News could no longer broadcast false claims about Dominion.” Dom.Opp.167. Those are all accusations of *omission*, or failure to prevent, not accusations that someone *actually played* a direct role in publication.

Dominion’s new theory is a legal dead end. As Fox Corporation explained in its opposition to Dominion’s motion for summary judgment, even if there were

evidence of “inaction” (and there is not), there is simply no viable theory of defamation-by-omission. Fox.Opp.27-28. Instead, 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. Indeed, a New York court recently dismissed Smartmatic’s defamation claims against Fox Corporation for failure to allege that “any Fox Corporation employee played an *affirmative* role in the publication of the challenged defamatory statements.” *Smartmatic USA Corp. v. Fox Corp.*, 2023 WL 1974442, at *2 (N.Y. App. Div. Feb. 14, 2023) (emphasis added). Allowing Dominion’s claims to proceed on a failure-to-intervene theory would, as the New York Court of Appeals put it in a similar context, “impos[e] upon the management of newspapers the intolerable burden of rechecking every reporter’s assertions and retracing every source before proceeding with such a decision.” *Karaduman v. Newsday, Inc.*, 416 N.E.2d 557, 566 (N.Y. 1980). Such a rule “would clearly pose an unacceptable barrier to the free flow of ideas.” *Id.*

Courts across the country have rejected analogous defamation-by-omission theories. The Hawaii Supreme Court held that “where,” (as here) “the defendant himself has not published the defamatory matter,” the plaintiff must prove “that the

defendant through a third party *directed or procured* its publication.” *Runnels v. Okamoto*, 525 P.2d 1125, 1127-1128 (Haw. 1974) (emphasis added). The plaintiff there argued that the defendants, members of the city council who did not publish the defamatory report themselves, should nevertheless be liable because they “accepted” the publication by one of their members and did not “disavow” or “disassociate” themselves from it. *Id.* at 1127-1128. The court rejected that argument, explaining that “[c]ase law is completely devoid of the rule of law urged upon us by the plaintiff that members of [an organization] have an affirmative legal duty to disavow and disassociate themselves from a libel published by one of their number, and that their failure to do so ratifies or ‘accepts’ that libel and its attendant liability. The law of defamation cannot be applied in so illogical a fashion.” *Id.* at 1128.

In fact, courts have made clear that defamation-by-omission is not a viable theory even if the defendant not only possesses the authority to stop a publication, but has actually exercised that authority in the past. *Maynard v. Fellner*, 1979 WL 30602 (Wis. Ct. App. 1979), *aff’d*, 297 N.W.2d 500 (Wis. 1980), is illustrative. There the plaintiff, like Dominion, sought to defeat summary judgment by pointing to “two occasions when Port [the printer] refused to publish pictures” in the newspaper it printed. *Id.*, at *5. The plaintiff then argued that because the printer

had exercised its authority in the past to stop certain publications, the printer should be on the hook for other content it permitted the newspaper to print. *Id.* The court rejected that argument, explaining that, “[b]y refusing to print these pictures, Port did not undertake a duty to review and verify the non-libelous character of all material it prints.” *Id.*

None of the cases Dominion cites comes anywhere near supporting its failure-to-prevent theory of defamation liability.² In *Hunt v. Liberty Lobby*, the court looked to the state of mind of the Chairman and Managing Editor of the publication *because they changed the original headline and added the misleading subheadlines* in the article. 720 F.2d 631, 646 (11th Cir. 1983). In *Stone v. Essex County Newspapers, Inc.*, the editor personally reviewed an allegedly defamatory article. 330 N.E.2d 161, 174 (Mass. 1975).

Dominion has produced zero evidence that anyone at Fox Corporation drafted, edited, or reviewed the statements it challenges. Dominion’s citation to *Phoenix*

² Nor do Dominion’s repeated citations to Dinh’s testimony that ideally an executive ought “to prevent and correct known falsehoods,” (Dom.Opp.7, 132-33, 141-43), establish that rule. To state the obvious, deposition testimony is not legal authority; indeed, it hardly seems likely that Dominion would be willing to accept everything else Dinh said as legally binding. At any rate, Dominion misleadingly implies that Dinh was discussing a *legal* “obligation” when in fact he was answering questions about “moral and ethical obligation.” Ex. E53, V. Dinh Dep. Tr. 314:3-316:25.

Newspapers, Inc. v. Church is selective quotation. Dominion claims that the court looked to the state of mind of the employee with “ultimate authority to approve or disapprove,” but it leaves out that the same employee was “directly involved in the activities leading up the publication of the editorial.” 537 P.2d 1345, 1359 (Ct. App. Ariz. 1975). *Bandido’s, Inc. v. J. Gazette Co.*, merely said that the court could look beyond the drafter’s conduct for evidence of “an extreme departure from the standards of investigation.” 575 N.E.2d 324, 327 (Ind. Ct. App. 1991). It did not say that a corporate parent is on the hook for failing to stop a publication by its subsidiary. And cases about republication and distributor liability do not help Dominion, as those cases all require the defendant to have played an affirmative role in the publication or distribution of a defamatory statement. Dom.Opp.136-37.³

Beyond that, Dominion just cites a treatise, written by one of its own attorneys, refuting the proposition that only “one person” in an organization can be responsible for a publication. True—but irrelevant, as Fox News has never claimed

³ Nowhere in its 217-page opposition does Dominion present any evidence that Fox Corporation directly distributed Fox News content. To the extent Dominion tries to argue that Fox Corporation distributed Fox News content simply because it has a controlling interest in Fox Broadcasting (a previously dismissed party), that is a blatant “end-run around the presumption of separate corporate identity.” *Sahu v. Union Carbide Corp.*, 2012 WL 2422757, at *5 (S.D.N.Y. June 26, 2012), *aff’d sub nom. Janki Bai Sahu v. Union Carbide Corp.*, 528 F. App’x 96 (2d Cir. 2013).

otherwise. Of course multiple employees can play an affirmative role in drafting or publishing a defamatory statement. The problem for Dominion is that there is no evidence that anyone at Fox Corporation did. Dominion cannot remedy that evidentiary deficiency by trying to rewrite defamation law.

III. Dominion’s Latest Theory Is Just Vicarious Liability By Another Name.

Dominion’s new theory is no more consistent with corporate law than with defamation law. While Dominion introduces some new terms in its opposition brief, such as “chain of command” and “distributor liability,” its theory eventually boils down to yet another attack on corporate separateness and attempted end-run around veil-piercing law. *Sahu*, 2012 WL 2422757, at *5; *accord Fox Corp.*, 2022 WL 2229781, at *9. This Court has rejected each of those efforts to date, and it should do so again here again.

Dominion’s various theories that Fox Corporation is liable because its executives “allowed” the challenged statements to occur, could have prevented the challenged statements from occurring, or failed to issue retractions are simply different ways of saying that because various executives Fox Corporation theoretically *could have* exercised control over content on Fox News, Fox Corporation should be liable for all the content Fox News publishes. But Dominion grounds that theory not in evidence that anyone from Fox Corporation *actually*

exercised such control, but in the theory that people would have listened if someone did because Fox Corporation is the parent of Fox News. That is just another way of trying to impose liability on Fox Corporation for no reason other than because Fox News is its subsidiary. Indeed, Dominion’s frequent references to “chain of command” give away the game: Dominion thinks that Fox Corporation is liable for everything Fox News does, not because anyone at Fox Corporation participated in the creation or publication of the challenged statements, but simply because Fox Corporation is above Fox News on the corporate family org chart.

When agency and vicarious liability theories reared their head earlier in this case, this Court rightfully rejected them. In its motion-to-dismiss opinion, the Court rejected Dominion’s “agency theory,” which rested “primarily on its assertion that Fox Corporation exercises a high degree of control over the operations of Fox News.” *Fox Corp.*, 2022 WL 2229781, at *9. The Court reiterated that rejection again just a few months ago. 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). And last week, the New York appellate court made essentially the same observation in dismissing Smartmatic’s defamation claims against Fox Corporation,

noting that the “inference that Fox Corporation, merely by virtue of its ownership of Fox News and its profits, actively took part in the procurement, composition, and publication of the challenged statements, does not alone suffice to allege defamation claims against a corporate parent based on conduct by its wholly owned subsidiary.” *Smartmatic USA Corp.*, 2023 WL 1974442, at *2.

Even setting aside defamation law on who is “responsible” for a statement, the basic problem with these theories is that to accept them would be to disregard the corporate separateness of Fox Corporation and Fox News, flying in the face of Delaware’s respect for the corporate form. As the Court explained, “Dominion’s agency theory . . . 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). This Court also recognized that Dominion’s vicarious liability theories would have raised jurisdictional barriers, as they would effectively work an end-run around the black-letter law that only the Court of Chancery can set aside corporate separateness through veil piercing. Ex. J2, Motion for Consolidation Oral Argument Hearing Tr., at 96:10-20 (Dec. 21, 2022) (“I am not going to let people pierce the corporate veil If you want to pierce the corporate veil, you are in the wrong place.”); *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).

To hold a corporate parent liable for a corporate subsidiary's tort just because the parent did not prevent it would destroy any semblance of corporate separateness. Under Dominion's theory, Comcast would be liable for any and all alleged defamation by NBC News. And it would not stop at defamation claims. The corporate parent of a retail store might just as well be liable for failing to prevent a slip and fall that occurs in a store owned by a subsidiary. Dominion's theory that a corporate parent is liable when it *fails to prevent* a corporate subsidiary from committing a tort is just another way of saying that corporate entities should not be separate for liability purposes. The Court has rejected that facial attack on corporate separateness already, and it should do so again.

IV. Dominion's Efforts To Demonstrate Actual Malice Are Irrelevant, But In All Events Distort The Record Evidence.

Because Dominion fails to identify any evidence that anyone at Fox Corporation played a direct role in any of the challenged statements, its claim against Fox Corporation fails for that reason and its efforts to gin up a dispute about actual malice by cobbling together out-of-context testimony by high-ranking Fox Corporation executives are futile. All of that might make for good headlines, but it

is legally irrelevant. Nevertheless, while there is not enough space in this brief to correct all of Dominion's exaggerations and false implications, Fox Corporation corrects some of the most egregious examples.

For instance, on the very first page of its brief, Dominion quotes Rupert Murdoch and Viet Dinh to the effect that Fox News should not allow lies or false allegations to be broadcast. Dom.Opp.1. That is a noncontroversial truism in the abstract, but Dominion leaves out the extensive testimony from both Murdoch and Dinh that when the President or his surrogates make wild or unsubstantiated claims, those are obviously newsworthy allegations that the press must report regardless of whether they are true or false. Ex. E54, R. Murdoch Jan 19, 2023 Dep. Tr. 130:10-131:14; Ex. E53, V. Dinh Dep. Tr. 287:20-288:21.

Similarly, Dominion cherry picks quotes from Paul Ryan's testimony, suggesting that he disapproved of Fox News' coverage of the President's election-fraud allegations.⁴ Dom.Opp.23-24. But Dominion leaves out Ryan's testimony that those allegations were obviously newsworthy and merited coverage regardless of whether they were true. Ex. E52, P. Ryan Dep. Tr. 83:20-86:17; 127:6-25; 182:9-

⁴ This is setting aside the fact that Ryan's state of mind is legally irrelevant as he had no involvement in directing content on Fox News Network or Fox Business Network. *Supra* Argument I.

184:6; 246:5-9; *see also id.* at 135:7-19 (testifying that if the President says drinking bleach would kill COVID, that is newsworthy even if proven incorrect). Dominion also leaves out that while Ryan did not personally believe the President’s allegations, he testified that people could certainly have believed them in good faith at the time. Ex. E52, P. Ryan Dep. Tr. 138:20-139:10 (“I think it’s not as easy as you describe it to be. I wish it were, but it’s not. And so sometimes I think it’s a little difficult to discern in the fog of all these things what is true, what is false, particularly given the sources of the information, particularly if it’s from some credible or some high-ranking source like a presidential campaign.”); *id.* 251:25-253:7 (similar); *id.* 263:1-264:10 (similar).

One of the most egregious examples of Dominion’s misrepresentation of the testimony is its discussion of Rupert Murdoch’s views on Mike Lindell. Dominion says that Murdoch “admitted it was ‘wrong for Tucker to host Mike Lindell to repeat those allegations against Dominion on January 26th, 2021,’ if Carlson did not contest Lindell’s claims on air.” Dom.Opp.37. It then says that, despite that belief, Murdoch “allowed Fox to continue spreading lies,” Dom.Opp.37, implying that Murdoch affirmatively allowed Lindell to make claims that Murdoch knew to be false. But Dominion omits that Murdoch was responding to a *hypothetical* question posed by Dominion’s counsel, as Murdoch testified that he *in fact* had no idea that Lindell

appeared on Carlson’s show, or even that Lindell was making election fraud claims, let alone claims about Dominion. Ex. E55, R. Murdoch Jan. 20, 2023 Dep. Tr. 344:2-18; 298:23-299:8. Murdoch’s answer to a hypothetical question is completely irrelevant to whether he was responsible for Lindell’s statements or what he knew when those statements were made. Dominion might be able to mislead the press with egregious distortions of the record. But it should not mislead the Court.⁵

Dominion also cites an email from Fox Corporation executive Raj Shah that described Powell’s claims as “outlandish.” Dom.Opp.7, 29. But Dominion omits Shah’s extensive testimony that he did not have any editorial role *at all*; his job is brand monitoring and public relations. And public relations is exactly what Shah was engaged in when he denigrated Powell’s claims after Tucker Carlson received backlash for casting significant doubt on them, in a widely watched segment of *Tucker Carlson Tonight* that Dominion does not like to talk about since it does not fit its narrative that Fox News was out to get Dominion. As Shah explained, “my

⁵ Dominion engages in similar misdirection with respect to its claim that Rupert Murdoch “assumed” that Rudy Giuliani was on Fox News discussing election fraud allegations. Dom.Opp.28, 149. In fact, Murdoch testified he was *not* aware that Giuliani was appearing on Fox News at the time; he “just assumed” that Giuliani had been on for purposes of answering a question at his deposition even though he did not actually know that to be true. Ex. E54, R. Murdoch Jan. 19, 2023 Dep. Tr. 129:21-130:9.

goal was to try to get individuals inside the White House, people with authority, to come forward to news media organizations and say one of two things; either people who would have information – either classified information or law enforcement sense of information, and say either there is evidence to back up her allegations, or there is not any evidence to back up her allegations. Either way, it would advance the narrative past Tucker Carlson and move him past his PR situation.” Ex. E56, R. Shah Dep. Tr. 265:18-272:3.

Dominion also repeatedly mischaracterizes testimony, text messages, and emails conveying skepticism about election fraud claims *generally* as skepticism about the claims against Dominion. But it ignores that, at the time of the election, there were many stories on election fraud, including many that had nothing to do with Dominion. It is little surprise, then, that Fox Corporation executives repeatedly testified that they were not focused on, or even aware of, Dominion *at all* before Dominion sued Fox News. *See, e.g.*, Ex. E52, P. Ryan Dep. Tr. 409:11-15 (testifying that before the lawsuit, he did not recall ever speaking with anyone at Fox Corporation about Dominion); Ex. E55, R. Murdoch Jan. 20, 2023 Dep. Tr. 348:4-351:15 (testifying that during the relevant time period, he had never heard of Dominion); Ex. E53, V. Dinh Dep. Tr. 47:12-48:22 (testifying that before the Dominion and Smartmatic lawsuits, the Fox Corporation board did not discuss

Powell or Giuliani). And the various communications Dominion misleadingly quotes do not mention Dominion at all.

At bottom, Dominion's case against Fox Corporation fails for a simple reason: There is no evidence that anyone at Fox Corporation played any role in the creation or publication of any challenged statement. This Court should grant summary judgment to Fox Corporation.⁶

CONCLUSION

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

⁶ At the very least, the Court should grant summary judgment to Fox Corporation on Dominion's claim for punitive damages, which fails for the same reasons explained in Fox News' summary judgment briefs. FNN.MSJ.PartIV; FNN.Reply.PartIV.

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