

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

DONALD J. TRUMP FOR PRESIDENT,
INC.,

Plaintiff,

v.

NORTHLAND TELEVISION, LLC, d/b/a
WJFW-NBC,

Defendant

Case No. 20-cv-00385-WMC

and

PRIORITIES USA ACTION,

Intervenor Defendant.

COMPLAINT

Plaintiff, Donald J. Trump for President, Inc. (“plaintiff” or “the Trump Campaign”), for its Complaint against intervenor defendant, Priorities USA Action (“PUSA”), alleges as follows:

INTRODUCTION AND NATURE OF THE CASE

1. In the landmark case of *New York Times v. Sullivan*, which applied the First Amendment to common law defamation, the U.S. Supreme Court explained: “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). The First Amendment is intended to protect and nurture such wide-open exchange and public debate. It has its limits, however, as that same year, the Supreme Court explained that the First Amendment provides no haven for “known lies”:

“That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. For the use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected. Calculated falsehood falls into that class of utterances which ‘are no essential part of any exposition of ideas ...’ Hence the knowingly false statement and the false statement made with reckless disregard of the truth [] do not enjoy constitutional protection.” *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) (emphasis added); see *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 150 (1967) (“[T]hat dissemination of information and opinion on questions of public concern is ordinarily a legitimate, protected and indeed cherished activity does not mean ... that one may in all respects carry on that activity exempt from sanctions designed to safeguard the legitimate interests of others.”).

Anderson v. The Augusta Chronicle, 585 S.E.2d 506, 513 (S.C. Ct. App. 2003) (emphasis added). This is a case involving a “knowingly false statement,” which is inherently harmful to democracy because it is intended to mislead the public about a subject of public policy.

2. This case concerns a false and defamatory statement in a television advertisement produced and sponsored by PUSA, a far-left Super PAC, that has been distributed via social media and broadcast through various media outlets, including television stations such as defendant Northland Television, LLC d/b/a WJFW-NBC (“WJFW-NBC”), thereby causing material harm to the reputation of Donald J. Trump’s principal campaign committee, Donald J. Trump for President, Inc. (“the Trump Campaign”). The advertisement, entitled “Exponential Threat,” and the substantially similar “One Week Later” (collectively, the “PUSA ads”), do not just contain a false and defamatory statement about the Trump Campaign—they are far more insidious and, ultimately, far more dangerous. The PUSA ads were produced through the use of digital technology by taking audio clips from Trump Campaign events and piecing those clips together to manufacture a blatantly false statement that was never said by candidate Trump: “The coronavirus, this is their new hoax.” (That statement is referenced herein as the “Manufactured Statement.”) The PUSA ads knowingly and intentionally misattributed the

Manufactured Statement to candidate Trump – a statement that PUSA knew that candidate Trump never said. PUSA knowingly and intentionally broadcast the PUSA ads containing the false and defamatory Manufactured Statement, which was produced through the use of technology that depicted a clearly false statement through audio and visual means. By including the Manufactured Statement as the opening line of the PUSA ads, which were widely broadcast on television stations and through other means throughout the country during a hotly contested campaign year and amidst a public health crisis, PUSA misled the public by representing that candidate Trump made a statement he never in fact made.

3. PUSA knowingly and intentionally produced and sponsored the PUSA ads containing the false and defamatory Manufactured Statement. The Trump Campaign sent cease and desist letters to various television stations that were broadcasting the PUSA ads to notify those stations about the fake, deceptive, and fraudulent manner in which the PUSA ads were produced and of the false and defamatory Manufactured Statement contained in the ads. The letters further informed the stations of the fact that multiple, independent, fact-checking organizations rightly concluded that the Manufactured Statement in the PUSA ads is clearly false because candidate Trump did not utter that statement.

4. PUSA obtained a copy of the Trump Campaign's cease and desist letters sent to TV stations concerning the PUSA ads. PUSA not only disregarded the thorough showing of the false and defamatory Manufactured Statement, it doubled down and expanded the distribution of the PUSA ads for broadcast more frequently and on more TV stations. Further, through its counsel, PUSA sent TV stations broadcasting the PUSA ads throughout the country a letter in response to the Trump Campaign's cease and desist letters. Upon information and belief, PUSA widely distributed its letter response to TV stations broadcasting the PUSA ads. Defendant WJFW-NBC and other TV stations nationwide continued to broadcast the PUSA ads and

accepted PUSA's purchase of advertising air time to broadcast the ads. Those TV stations apparently relied upon the assertions in PUSA's response letter claiming the truth of the Manufactured Statement in the PUSA ads.

5. PUSA's letter to TV stations in response to the Trump Campaign's cease and desist letters acknowledged the Trump Campaign's claim concerning the false Manufactured Statement in the PUSA ads. It conceded that the PUSA ads splice together audio clips to depict candidate Trump saying the Manufactured Statement: "The coronavirus, this is their new hoax." PUSA's letter told the TV stations that the Manufactured Statement was said by candidate Trump, as it was comprised of his "words." It asserted that the Manufactured Statement accurately attributed candidate Trump's words stated at a campaign rally. At the same time, however, PUSA also asserted, contrary to the plain audio and textual representation of the Manufactured Statement, that the PUSA ads "do[] not assert that Mr. Trump said the precise sentence, 'The coronavirus, this is their new hoax.'" Yet the opening line to the PUSA ads has audio of candidate Trump saying those words together, as a sentence. This is confirmed by the text running on the screen putting those words together, as a sentence. PUSA's response letter to the TV stations omits that fact in describing the PUSA ads to TV stations.

6. PUSA knew and intended that the PUSA ads contained the Manufactured Statement by candidate Trump using audio clips of his words and text representing that the statement was made as a sentence. This was verifiably false, and, was broadcast with knowledge or reckless disregard for the falsity of the Manufactured Statement.

7. The Manufactured Statement in the PUSA ads was knowingly and intentionally false and it was defamatory of the Trump Campaign. Such conduct finds no protection in the law. PUSA was aware that the Manufactured Statement depicted in the PUSA ads was not actually made by candidate Trump, and PUSA knowingly and intentionally produced the PUSA

ads to include a false statement manufactured through the use of digital technology. PUSA continues to make the advertisements containing the Manufactured Statement publicly available and is liable for the false and defamatory content of the PUSA ads.

PARTIES

8. The Trump Campaign is an authorized committee of presidential candidate Donald J. Trump (“candidate Trump”) as defined by 11 CFR § 9032.1(a), which is incorporated in Virginia and has its principal place of business in New York. The Trump Campaign has operated President Trump’s reelection campaign for the 2020 Presidential Election since January 20, 2017.

9. Priorities USA Action’s principal place of business is in Washington, D.C. and it is a corporation incorporated in the District of Columbia. PUSA is a federal political action committee (“PAC”) with its headquarters at 1030 15th Street NW, Suite 950 West, Washington, D.C. 20005. According to PUSA, a core part of its mission to “[t]o help Democrats defeat Trump in 2020.” See PUSA, “Research Priorities” (last visited June 15, 2020) available at <https://priorities.org/issue/research-priorities/>

JURISDICTION AND VENUE

10. PUSA moved to intervene in this action pursuant to Rule 24 of the Federal Rules of Civil Procedure. It therefore has voluntarily subjected itself to the jurisdiction of this Court.

11. Venue in this District is proper because the PUSA ads containing the false and defamatory Manufactured Statement concerning the Trump Campaign were broadcast on WJFW-NBC, a television station airing in this judicial district.

BACKGROUND FACTS

12. Donald J. Trump is the Trump Campaign’s candidate for the 2020 Presidential Election.

13. Pursuant to 52 U.S.C. § 30102(e)(1) and (3), candidate Trump has established “Donald J. Trump for President, Inc.” as his principal campaign committee.

14. The Trump Campaign is responsible for, among other things, coordinating and organizing political and fundraising appearances, creating and/or purchasing political advertising on behalf of the candidate, collecting contributions for the candidate and reporting them to federal regulators as required by law, and making expenditures on behalf of the candidate, each and all for the sole purpose of re-electing its candidate as President of the United States.

15. Candidate Trump is one of many people authorized to speak and who does speak on behalf of the Trump Campaign. The purported statements of any authorized speaker alleged to have been made on behalf of the Trump Campaign impact the Trump Campaign.

16. The Manufactured Statement depicted in the PUSA ads was falsely represented as being made by the Trump Campaign’s candidate. Defendants assert that the Manufactured Statement was made by candidate Trump at a campaign rally for the Trump Campaign in Charleston, South Carolina.

17. PUSA created the PUSA ads in order to affect voting behavior of members of the voting public and influence the 2020 presidential election as defeating candidate Trump is a core tenant of its mission. *See* PUSA, “Research Priorities” (last visited June 15, 2020) available at <https://priorities.org/issue/research-priorities/>.

18. The Trump Campaign depends upon support from the public, and the Manufactured Statement in the PUSA ads tended to and tends to interfere with the Trump Campaign’s activities by prejudicing it in the public’s estimation.

19. The Trump Campaign’s effort to acquire votes necessarily rests on its and its candidate’s reputation.

20. The public activities and statements made by the Trump Campaign's candidate while on the campaign trail are a material activity of the Trump Campaign, reflect upon the Trump Campaign, impact the candidate's chances for reelection, and thereby directly affect the fundamental mission and purpose of the Trump Campaign. Those communications express to voters information upon which voters may consider and make the determination whether to cast their vote for the Trump Campaign's candidate.

The "Exponential Threat" and "One Week Later" Advertisements

21. PUSA is a federal political action committee subject to regulation by the Federal Elections Commission ("FEC").

22. According to PUSA, part of its mission to "[t]o help Democrats defeat Trump in 2020." See PUSA, "Research Priorities" (last visited June 15, 2020) available at <https://priorities.org/issue/research-priorities/>.

23. On March 23, 2020, PUSA announced the launch of an initial \$6 million television and digital advertising buy which included "Exponential Threat," and along with "One Week Later," are the PUSA ads at issue here. The Exponential Threat advertisement was intended to run in Florida, Michigan, Pennsylvania, and Wisconsin. See PUSA, "Priorities USA Action Launches Initial \$6 Million TV & Digital Ad Buy Holding Trump Accountable for Failing Coronavirus Response" (Mar. 23, 2020) available at <https://priorities.org/press/priorities-usa-action-launches-initial-6-million-tv-digital-ad-buy-holding-trump-accountable-for-failing-coronavirus-response/>. A true and correct copy of that press release is attached hereto as Exhibit 1.

24. PUSA's March 23, 2020 press release (Exhibit 1) contains a link to the "Exponential Threat" advertisement, at

<https://www.youtube.com/watch?v=bkMwvmJLnc0&feature=youtu.be> (last visited June 15, 2010).

25. The “Exponential Threat” advertisement of PUSA takes audio clips of candidate Trump and pieces them together to manufacture a false statement that was not made by the President: “The coronavirus, this is their new hoax.” (As noted above, that statement is referred to herein as “Manufactured Statement.”) *See* PUSA, “Exponential Threat” available at <https://www.youtube.com/watch?v=bkMwvmJLnc0&feature=youtu.be> (last visited June 15, 2010).

26. True and correct copies of screen shots of the Manufactured Statement in the “Exponential Threat” advertisement are attached hereto as Exhibit 2.

27. On March 30, 2020, PUSA released an updated version of the “Exponential Threat” advertisement entitled “One Week Later,” which contains the same Manufactured Statement, “The coronavirus, this is their new hoax.”, and acknowledged that it was aware of the Trump Campaign’s claim that the advertisement was false and misleading. *See* PUSA, “One Week Later, Priorities USA Action Releases Updated Version of Ad Trump Tried to Block” (Mar. 30, 2020) available at <https://priorities.org/press/one-week-later-priorities-usa-action-releases-updated-version-of-ad-trump-tried-to-block/>. A true and correct copy of that press release is attached hereto as Exhibit 3.

28. PUSA’s March 30, 2020 press release (Exhibit 3) contains a link to the “One Week Later” advertisement, at <https://www.youtube.com/watch?v=hl6T2XxNtM0&feature=youtu.be> (last visited June 15, 2010).

29. True and correct copies of screen shots of the Manufactured Statement in the “One Week Later” advertisement are attached hereto as Exhibit 4.

30. The PUSA ads were broadcast on TV stations throughout the country numerous times between March 24, 2020 and April 6, 2020. For example, WJFW-NBC broadcast the PUSA ads approximately forty-three times on WJFW-NBC between March 24 and April 6, 2020.

31. The PUSA ads (Exponential Threat and One Week Later) take an audio clip from a speech given by candidate Trump on February 28, 2020 at a campaign rally in Charleston, South Carolina (the “South Carolina Campaign Speech”) and stitches it together with other audio of candidate Trump saying the word “the coronavirus” to create the Manufactured Statement. *See* President Donald J. Trump, Remarks at a Campaign Rally, Charleston, SC (Feb. 28, 2020), available at <https://www.c-span.org/video/?469663-1/president-trump-campaign-event-north-charleston-south-carolina&start=405.2>. *See* South Carolina Campaign Speech at timestamp 6:05 minutes to 8:11 minutes; *see also* (Doc.9: 12).

32. Contrary to the PUSA ads, in the South Carolina Campaign Speech, candidate Trump did not utter the following words: “The coronavirus, this is their new hoax.” The PUSA ads’ Manufactured Statement is verifiably false, as candidate Trump did not actually say those words as a sentence as depicted by the Manufactured Statement. The PUSA ads depict candidate Trump saying words, in a sentence (the Manufactured Statement) that he did not in fact say.

33. The Manufactured Statement is materially different than the actual words said by candidate Trump in the South Carolina Campaign Speech. The South Carolina Campaign Speech was approximately 1 hour and 25 minutes in total, and during this speech candidate Trump’s remarks covered a number of issues, including the coronavirus pandemic, the vote counting issues at the Iowa Caucus, immigration and healthcare policy, and tactics used by his political opponents to affect his reelection, including the “impeachment hoax.” Six minutes and 5 seconds into the speech, candidate Trump says: “Now the Democrats are politicizing the

coronavirus” After saying other words, approximately 45 seconds later, candidate Trump then refers to the “impeachment hoax” and about 15 seconds later he refers to his political opponents’ characterization of his response to the coronavirus, saying “this is their new hoax.” Accordingly, candidate Trump’s actual words in the South Carolina Speech were that the Democrats’ politicization of the coronavirus, and criticism of the Trump administration’s response to the coronavirus, “this is their new hoax.”

34. The Manufactured Statement in the PUSA ads was created by falsely piecing together the separate audio clips “The coronavirus” and “this is their new hoax” to create an audio clip of candidate Trump saying those words all together, as one sentence. The PUSA ads compound this falsity by displaying text representing that these words were said together. While the PUSA ads play these pieced-together audio clips as a complete sentence, in the background there is a graphic that appears to show the growth of known cases of COVID-19 in the United States between January and March 2020.

35. While the audio of the Manufactured Statement plays in the PUSA ads, also displayed are subtitles of text that match with the words in the audio clips.

36. The PUSA ads both display the following text: “The coronavirus,” then immediately following, display the text: “this is their new hoax.” In the PUSA ads, the phrase “The coronavirus” begins with a capitalized “T”, the “t” in “this” is lowercase, and the word “hoax” is followed by a period. Screenshots of these frames of the PUSA ads are attached hereto as Exhibits 2 and 4.

37. As has been described in this case, the PUSA ads are “montage” ads. A “montage” is a juxtaposition of “heterogeneous elements,” a composite picture made by combining several separate pictures, or a mixture of items. See <https://www.merriam-webster.com/dictionary/montage> There are nine separate sentences in the PUSA ads, consisting

of audio clips of each sentence allegedly made by candidate Trump. Those statements purportedly come from seven different speeches or statements, made at different times. (Doc.9: 10 & n.2). Each of these statements purports to be actual audio clips of nine different sentences presented by audio in candidate Trump's own words.

38. The PUSA ads consist of several different audio clip statements with accompanying subtitles, expressing through audio and visual means, nine different sentences purportedly said by candidate Trump. The Manufactured Statement is the first audio and visual depiction of a statement by candidate Trump, followed by audio clip statements and visual depictions of eight other sentences purportedly said by candidate Trump.

39. The PUSA ads intentionally create a false message by manufacturing fake audio and using such fake audio to create a false, captioned quotation (the Manufactured Statement), in both cases to make it appear as though candidate Trump said the phrase "The coronavirus, this is their new hoax." The pieced-together audio clips and accompanying subtitles thus falsely represent that the candidate stated at a Trump Campaign rally that "The coronavirus, this is their new hoax." Candidate Trump did not, in fact, make that statement.

Independent Fact Checkers Reject the Manufactured Statement as False

40. Multiple independent fact-checking organizations debunked and proved false the Manufactured Statement in the PUSA ads: that candidate Trump stated, "The coronavirus, this is their new hoax." Candidate Trump did not make that statement and he did not say in the campaign speech that the coronavirus itself is a "hoax."

41. On February 28, 2020, after candidate Trump's South Carolina Campaign Speech, Slate's Will Saletan explained, tweeting the following: "Trump's use of the word 'hoax' tonight (7:45 in this video) referred to what he said a minute earlier: 'The Democrats are politicizing the coronavirus. ...We did one of the great jobs.' He was saying the hoax is that he's handled it

badly. Not the virus itself.” Tweet from Will Saletan (Feb. 28, 2020) available at <https://twitter.com/saletan/status/1233600059025035265> and attached hereto as Exhibit B.

42. On February 29, 2020, Check Your Fact published an article entitled “Fact Check: Did Trump Call The Coronavirus A ‘Hoax’ At His South Carolina Rally?” Brad Sylvester, “Fact Check: Did Trump Call the Coronavirus A ‘Hoax’ At His South Carolina Rally?” [hereafter, “Check Your Fact”] available at <https://checkyourfact.com/2020/02/29/fact-check-donald-trump-coronavirus-hoax-south-carolina-rally/> and attached hereto as Exhibit C.

43. The Check Your Fact article analyzed a Politico “article claiming President Donald Trump called the novel coronavirus a ‘hoax’ at his Feb. 28 campaign rally in South Carolina.” *See id.*

44. The quote from the Politico publication was as follows: “President Trump on Friday night tried to cast the global outbreak of the coronavirus as a liberal conspiracy intended to undermine his first term, lumping it alongside impeachment and the Mueller investigation.” *Id.*

45. The Check Your Fact article determined that the claim made by the Politico article was “False.” *See id.*

46. On March 1, 2020, in response to former Democratic presidential candidate Mike Bloomberg’s comment that he “find[s] it incomprehensible that the President would do something as inane as calling it a hoax, which he did last night in South Carolina,” CBS News’ Scott Pelley replied, “[h]e said the—the Democrats making so much of it is a Democratic hoax, not that the virus was a hoax.” Scott Pelley, *CBS Face the Nation*, available at <https://www.cbsnews.com/news/full-transcript-of-face-the-nation-on-march-1-2020/>

47. On March 2, 2020, Snopes, the popular, self-described “definitive fact-checking resource,” published an article finding: “Trump did not say in the passage above that the virus

itself was a hoax.” Bethania Palma, “Did President Trump Refer to the Coronavirus as a ‘Hoax’?” (Mar. 2, 2020) available at <https://www.snopes.com/fact-check/trump-coronavirus-rally-remark/> and attached hereto as Exhibit D.

48. On March 13, 2020, the Washington Post published an article entitled “Biden ad manipulates video to slam Trump.” Meg Kelly, “Biden ad manipulates video to slam Trump,” *The Washington Post* (Mar. 13, 2020) (emphasis added) [hereafter, “Washington Post Article”], attached hereto as Exhibit E.

49. The “Biden ad” analyzed by the Washington Post was a March 3rd tweet by the Biden campaign including a video containing the same Manufactured Statement as the PUSA ads, comprised of the same false, manufactured audio clip of candidate Trump as contained in the PUSA ads. *See id.*

50. According to the fact-checker from the Washington Post: “The full quote shows Trump is criticizing Democratic talking points and the media’s coverage of his administration’s response to coronavirus. He never says that the virus itself is a hoax, and although the Biden camp included the word ‘their,’ the edit does not make clear to whom or what Trump is referring.” *Id.*

51. The Washington Post gave the Biden ad “Four Pinocchios,” which is its highest rating for false information. *Id.*

52. On March 15, 2020, more than one week before WJFW-NBC and other TV stations began running the PUSA ad, PolitiFact, another popular fact-checking website, also rated as “False” the Biden ad including the false Manufactured Statement later included in the PUSA ads. PolitiFact concluded that the Biden ad was a “deceptively edited ad,” explaining that “Biden’s video is inaccurate. We rate it False.” The Biden ad was rated “False” because it included the false Manufactured Statement later included in the PUSA ads. The Manufactured

Statement, comprised of falsely stitched-together audio clips, in the Biden ad is “an example of what the Washington Post calls ‘splicing,’ or ‘editing together disparate videos’ that ‘fundamentally alters the story that is being told.’ ” Daniel Funke, “Ad Watch: Biden video twists Trump’s words on coronavirus,” (Mar. 15, 2020) available at <https://www.politifact.com/factchecks/2020/mar/15/joe-biden/ad-watch-biden-video-twists-trumps-words-coronavir/> and attached hereto as Exhibit F.

Public Acceptance of False Manufactured Statement as Fact

53. The PUSA ads provide no citations attributing the nine sentences by candidate Trump to when and where they were allegedly said. The PUSA ads falsely depict candidate Trump as making the Manufactured Statement. However, candidate Trump never made the Manufactured Statement. However, due to the wide distribution of the PUSA ads, the false assertion that candidate Trump made the Manufactured Statement became and has become widely accepted as fact by members of the voting public.

54. The Manufactured Statement was, and has been, widely repeated in news articles and among members of the voting public on social media including Facebook and Twitter, all of which repeat the PUSA ad’s false Manufactured Statement. See, for example:

Robert Reich’s tweet:

<https://twitter.com/RBReich/status/1246825354624479234?s=20> (1k retweets, 2.8k likes);

George Takei’s tweet:

<https://twitter.com/GeorgeTakei/status/1247609785148682240?s=20> (8.7k retweets, 27.7k likes);

Dr. David A. Lustig’s tweet:

<https://twitter.com/drdave1999/status/1248225859355521024?s=20> (2.2k retweets, 3.7k likes);

Amber Phillips, Washington Post reporter, tweeted “Trump called it a ‘hoax’ in later February,” and later deleted the tweet, *see*

<https://www.washingtonexaminer.com/news/reporter-apologizes-and-deletes-tweet-claiming-trump-called-coronavirus-a-hoax>;

Associated Press, “Trump Campaign Threatens Lawsuit Over Political Ad Featuring President Labeling Coronavirus a ‘Hoax’ ” (Mar. 26, 2020) available at <https://time.com/5810960/anti-trump-coronavirus-ad-lawsuit/> (“President Trump and Fox News called [the coronavirus pandemic] a Democratic hoax.”);

Letter to Editor, Easton Express Times, “Trump’s ‘hoax’ is making America sick” (Mar. 24, 2020) available at <https://www.lehighvalleylive.com/opinion/2020/03/trumps-hoax-is-making-america-sick-letter.html>;

Letter to Editor, Easton Express Times, “Trump’s ‘hoax’ referred to inept Democrats, not the coronavirus” (Mar. 25, 2020) available at <https://www.lehighvalleylive.com/opinion/2020/03/trumps-hoax-referred-to-inept-democrats-not-the-coronavirus-letter.html> (responding to 3/24/2020 letter: “President Trump never called the virus a hoax. The writer is repeating a Democratic lie. Trump said some of the things the Democrats were saying about his administration’s response to the coronavirus outbreak was ‘their new hoax.’ ”).

55. Despite notice of cease and desist letters and numerous fact checkers debunking the Manufactured Statement in the PUSA ads as false or misleading, PUSA continued airing the ads with knowledge of or reckless disregard for the falsity of the Manufactured Statement in the ads.

PUSA’s Response Letter to the Cease and Desist Demand Reaffirmed the False, Manufactured Statement, to Induce TV Stations to Continue Airing the PUSA Ads

56. On March 25, 2020, the Trump Campaign sent cease and desist letter(s) (“Cease and Desist Letters”) to a number of television stations, including WJFW-NBC, informing the station manager that the PUSA ad is “false, misleading and deceptive.” A redacted version of the Cease and Desist Letter sent to WJFW-NBC is attached hereto as Exhibit G. The Trump Campaign sent cease and desist letters to other TV stations broadcasting the PUSA ads, in substantially the same form as Exhibit G.

57. The Cease and Desist Letters explained, in relevant part, that the PUSA ads stitched together audio clips from candidate Trump’s statements to falsely and intentionally

represent that he made the statement that “The coronavirus, this is their new hoax.” In fact, candidate Trump did not utter those words.

58. The Cease and Desist Letters referenced and attached source material from “multiple independent fact-checking organizations [that] have debunked the core claim of the PUSA ad,” that is, that candidate Trump stated: “The coronavirus, this is their new hoax.”

59. Upon information and belief, PUSA was provided a copy of the Trump Campaign’s Cease and Desist Letters sent to TV stations concerning the PUSA ads. PUSA not only disregarded the thorough showing of the false and defamatory Manufactured Statement, it doubled down and expanded the distribution of the PUSA ads for broadcast more frequently and on more TV stations.

60. On March 26, PUSA sent TV stations broadcasting the PUSA ads throughout the country a letter in response to the Trump Campaign’s cease and desist letters (“Letter Response”). A true and correct copy of PUSA’s Letter Response dated March 26, 2020 is attached hereto as Exhibit 5.

61. The TV stations that had been airing the PUSA ads, including WJFW-NBC, are subject to liability for broadcasting false and defamatory advertisements by third parties such as PUSA and such stations may refuse to broadcast such ads. PUSA sent the Letter Response to TV stations including WJFW-NBC to persuade them not to retract or refuse the airing of the PUSA ads and to continue broadcasting the PUSA ads.

62. Upon information and belief, those TV stations including WJFW-NBC relied upon the representations in PUSA’s Letter Response in making the decision to not retract or refuse to air the PUSA ads and to continue broadcasting those ads. For example, WJFW-NBC continued to run the PUSA ad, broadcasting the PUSA ad thirty-six more times from March 26, 2020 through April 6, 2020. WJFW-NBC broadcast the PUSA ad ten times on April 6, 2020.

63. In its Letter Response, PUSA acknowledges the Trump Campaign's claim that the PUSA ads were "false, misleading, and deceptive" due to the Manufactured Statement. The Letter Response concedes that the Trump Campaign's complaint about the PUSA ads "correctly states that the ad splices together audio clips" to depict candidate Trump saying the Manufactured Statement: "The coronavirus, this is their new hoax."

64. PUSA's Letter Response asserts that the PUSA ads "do[] not manipulate clips to make it seem like Mr. Trump said these words—he did, just like he said every other word in the ad." PUSA therefore told the TV stations and others that candidate Trump in fact made the Manufactured Statement. PUSA made this knowingly false statement in order to persuade TV stations to continue broadcasting the PUSA ads and to assert that the Manufactured Statement was not false and defamatory as claimed by the Trump Campaign.

65. Indeed, PUSA's assertions apparently convinced WJFW-NBC that candidate Trump actually made the Manufactured Statement, because in this case, WJFW-NBC has asserted:

- "The President's 'hoax' statement, included in the montage [*i.e.*, PUSA's ad], came from his address to a South Carolina rally ..." (Doc.9: 10);
- "[T]he President 'made the 'hoax' comment at a campaign rally in Charleston, South Carolina." (Doc.9: 11-12); and
- "The text of these words [the Manufactured Statement] appears on the screen" during the PUSA ads, and the words in the Manufactured Statement "are the President's actual words." (Doc.9: 11).

66. PUSA asserted in the Letter Response that candidate Trump actually said the words contained in the Manufactured Statement. However, PUSA also asserted that the PUSA ads "do[] not assert that Mr. Trump said the precise sentence, 'The coronavirus, this is their new

hoax.’ ” However, the opening line in the PUSA ads has audio of candidate Trump saying those words together, as a sentence. This is confirmed by the text running on the screen putting those words together, as a sentence. PUSA’s Letter Response omits that fact in describing the PUSA ads to TV stations.

67. PUSA told TV stations that the Manufactured Statement consisted of “words” said by candidate Trump, and that those words were stated at different times in a campaign speech. PUSA admitted that the Manufactured Statement in the PUSA ads consisted of “multiple” audio clips that are “distinct audio clips.” PUSA asserted that “[v]iewers” of the PUSA ads would know that “the ad compiles multiple clips” because the candidate’s “tone of voice discernibly changes.”

68. Upon information and belief, PUSA widely distributed its Letter Response to TV stations broadcasting the PUSA ads. Defendant WJFW-NBC and other TV stations nationwide continued to broadcast the PUSA ads and accepted PUSA’s purchase of advertising air time to broadcast the ads.

After Receiving the Cease and Desist Letter, PUSA Doubled Down, Expanding and Increasing the Distribution of the PUSA Ads Containing the Manufactured Statement

69. On March 26, 2020, PUSA doubled down in distributing the false, Manufactured Statement, in blatant disregard of the falsity shown by the Cease and Desist letters. PUSA expanded its ad buy for the “Exponential Threat” advertisement to Arizona. *See* PUSA, “Priorities USA Expands ‘Exponential Threat’ Ad Buy to Arizona Following Trump Campaign’s Failed Challenge” (Mar. 26, 2020) available at <https://priorities.org/press/priorities-usa-expands-exponential-threat-ad-buy-to-arizona-following-trump-campaigns-failed-challenge/>. A true and correct copy of this press release is attached hereto as Exhibit 6.

70. On March 27, 2020, PUSA again, knowing that the PUSA ads contained the false Manufactured Statement, expanded the distribution of the “Exponential Threat” advertisement to Spanish speaking viewers. *See* PUSA, “Priorities USA Launches “Exponential Threat” Ads in Spanish, Running Digitally in Florida” (Mar. 27, 2020) available at <https://priorities.org/press/priorities-usa-launches-exponential-threat-ads-in-spanish-running-digitally-in-florida/>. A true and correct copy of this press release is attached hereto as Exhibit 7.

71. On March 30, 2020, PUSA released an updated version of the “Exponential Threat” advertisement entitled “One Week Later,” which contains the same false, Manufactured Statement, “The coronavirus, this is their new hoax.” (*See* Exhibit 3, attached). The “One Week Later” advertisement is available at <https://www.youtube.com/watch?v=hl6T2XxNtM0&feature=youtu.be> and screen shots of the opening sentence of that advertisement are attached hereto as Exhibit 4.

72. In the press release announcing the One Week Later advertisement, PUSA acknowledged that it had been made aware that the Manufactured Statement was false and misleading. *See* PUSA, “One Week Later, Priorities USA Action Releases Updated Version of Ad Trump Tried to Block” (Mar. 30, 2020) available at <https://priorities.org/press/one-week-later-priorities-usa-action-releases-updated-version-of-ad-trump-tried-to-block/>. That press release is attached as Exhibit 3.

73. On April 1, 2020, PUSA further expanded the distribution of the “One Week Later” advertisement, announcing a \$10 million advertising buy, including an initial step of \$1 million of ad time and extending the duration of the airing of the advertisement. *See* PUSA, “Priorities USA Action Extends and Expands Ad Buy, Launches Biden vs. Trump Contrast Ads” (Apr. 1, 2020) available at <https://priorities.org/press/priorities-usa-action-extends-and-expands->

[ad-buy-launches-biden-vs-trump-contrast-ads/](#). A true and correct copy of this press release is attached hereto as Exhibit 8.

74. The PUSA ads, “Exponential Threat” and “One Week Later,” are both publicly available. See PUSA, “Exponential Threat” advertisement available at <https://www.youtube.com/watch?v=bkMwvmJLnc0&feature=youtu.be>, and “One Week Later” advertisement available at <https://www.youtube.com/watch?v=hl6T2XxNtM0&feature=youtu.be>

PUSA Distributed the PUSA Ads, Which are False and Defamatory of the Trump Campaign, With Knowledge and/or Reckless Disregard for the Falsity of the Manufactured Statement

75. PUSA is subject to liability under the law for distributing the false and defamatory Manufactured Statement in the PUSA ads.

76. PUSA intentionally manufactured and continues to widely distribute advertisements, which contain the false and defamatory Manufactured Statement concerning the Trump Campaign, knowing that such statement in the PUSA ads was indeed false and defamatory.

77. The PUSA ads may be replayed and shared from YouTube and other platforms and are republished and shared through the Internet by the sharing of the ad throughout social media. In short, the false audio clips of the candidate stating: “The coronavirus, this is their new hoax.” quickly became “viral.”

78. The PUSA ads contain fraudulently manufactured, false information about the Trump Campaign (*i.e.*, the Manufactured Statement) so that the Manufactured Statement would be accepted as true and continuously repeated. The PUSA ads, in short, were intended to create, and did create, a “meme,” to misattribute a quotation to the Trump Campaign by falsely representing that the candidate made the statement “The coronavirus, this is their new hoax.” This false statement has become a meme, repeated and redistributed throughout the United States

and the world, such that the Manufactured Statement allegedly by candidate Trump has become accepted as true by numerous persons throughout the U.S. and the world.

79. The PUSA ads include the false Manufactured Statement, depicted by audio clips and a false textual quotation of a statement allegedly made by candidate Trump at a campaign rally and/or another event organized and orchestrated by the Trump Campaign. The false Manufactured Statement in the PUSA ads is defamatory of the Trump Campaign because it falsely depicts the candidate as saying “The coronavirus, this is their new hoax.” in a campaign statement, by piecing together audio clips and displaying in text a purported quote from candidate Trump speaking at campaign events. PUSA continues to make the PUSA ads available and therefore it continues to defame the Trump Campaign.

80. The Manufactured Statement in the PUSA ads is false in representing that the Manufactured Statement was said by candidate Trump when he did not in fact utter that statement.

81. A viewer or listener of the PUSA ads might reasonably understand that the Manufactured Statement in the PUSA ads was intended to refer to the Trump Campaign. A reasonable person could believe that the Manufactured Statement concerned the Trump Campaign.

82. A listener or viewer of the Manufactured Statement comprised of audio clips of candidate Trump from the South Carolina Campaign Speech would reasonably believe that the Manufactured Statement concerned the Trump Campaign. The Manufactured Statement took audio clips of separate words said by candidate Trump at a campaign rally.

83. Because the false Manufactured Statement was represented to be an actual statement made by candidate Trump at the South Carolina campaign rally, an event of the Trump

Campaign, made by the candidate Trump, a viewer or listener of the PUSA ads would reasonably understand the false Manufactured Statement to concern the Trump Campaign.

84. A viewer or listener of the PUSA ads would also understand the false Manufactured Statement to concern the Trump Campaign because the last sentence of the PUSA ads demonstrates them to be about the presidential campaign, saying at the closing: “America needs a leader we can trust.”

85. The Manufactured Statement is of and concerning the Trump Campaign because it falsely communicates a statement in the candidate’s own words that the candidate did not say. Portions of the audio clips were taken from the candidate’s remarks at a campaign rally.

86. By the false, Manufactured Statement represented to be made by the candidate at a campaign rally that he did not make, PUSA made a false communication of and concerning the Trump Campaign.

87. The false Manufactured Statement is a statement of and concerning the Trump Campaign because it is represented as a statement actually made by candidate Trump at a campaign rally of the Trump Campaign in the midst of his re-election campaign. It defamed the Trump Campaign to falsely state that candidate Trump made the Manufactured Statement when he did not in fact make the statement.

88. Because the false Manufactured Statement was represented to be an actual statement made by candidate Trump at the South Carolina campaign rally, an event of the Trump Campaign, made by the candidate Trump, a viewer or listener of the PUSA ads would reasonably understand the Manufactured Statement to concern the Trump Campaign.

89. A viewer or listener of the PUSA ads would also understand the false Manufactured Statement to concern the Trump Campaign because the last sentence of the PUSA

ads demonstrates they are about the presidential campaign, saying at the closing: “America needs a leader we can trust.”

90. The PUSA ads defame the Trump Campaign in representing to viewers and listeners of the ads that the false Manufactured Statement was said by candidate Trump.

91. The PUSA ads include audio clips of candidate Trump’s statements in his own voice, along with subtitles visually depicting the words in the audio clips, followed by a tag line about needing “a leader we can trust.” Excluding the closing tag line of the ad, the PUSA ads purports to communicate verbatim statements by candidate Trump.

92. Because the Manufactured Statement and the other eight sentences in the PUSA ads were comprised of audio clips of candidate Trump’s words, accompanied by subtitles communicating the audio sentences, a reasonable viewer or listener of the PUSA ads would conclude that the Manufactured Statement purports to be a verbatim audio and textual representation of a sentence uttered by candidate Trump.

93. A reasonable viewer or listener hearing or seeing the PUSA ads would hear and/or see that the candidate Trump said, as a sentence: “The coronavirus, this is their new hoax.”

94. The Trump Campaign depends upon support from the public to achieve its purposes. The false Manufactured Statement in the PUSA ads tends to interfere with the Trump Campaign’s activities by prejudicing the Trump Campaign in the estimation of the public. The Manufactured Statement in the PUSA ads is therefore defamatory of the Trump Campaign.

95. A viewer or listener of the PUSA ads would understand the Manufactured Statement in the PUSA ads to state the position of the Trump Campaign, that candidate Trump stated, “The coronavirus, this is their new hoax.”, and that the Trump Campaign stated that the coronavirus pandemic is a “hoax.” The false Manufactured Statement concerning the Trump

Campaign has harmed and will harm the reputation of the Trump Campaign and has deterred and will deter third persons from associating or dealing with the Trump Campaign, including causing them not to vote for its candidate for reelection.

96. PUSA's distribution of the ads containing the false Manufactured Statement harmed and harms the reputation of the Trump Campaign, lowering it in the estimation of the public. Persons who view and/or hear the Manufactured Statement would be led by viewing and/or hearing the false Manufactured Statement to believe that the Trump Campaign did not and does not believe the coronavirus pandemic is real. The PUSA ads therefore defame the Trump Campaign because the ads contain the false Manufactured Statement falsely represented to be made on behalf of the Trump Campaign. The PUSA ads caused the false Manufactured Statement to continue to be repeated by the public to defame and disparage the Trump Campaign.

97. The false Manufactured Statement in the PUSA ads have forced, and will continue to force, the Trump Campaign to expend substantial funds on corrective advertisements, and to otherwise publicize the fact that candidate Trump did not make the Manufactured Statement, that is, he did not refer to the very real and very serious coronavirus pandemic as a "hoax."

98. The PUSA ads perpetuate the acceptance and repetition of this false information and continued the effort to defame and disparage the Trump Campaign by the means of the Manufactured Statement.

CLAIM FOR RELIEF
COMMON LAW DEFAMATION

99. Plaintiff reincorporates and realleges as though fully set forth hereto the allegations of paragraphs 1 through 98 of this Complaint.

100. The PUSA ads contain the Manufactured Statement, which is comprised of stitched together audio clips of candidate Trump that falsely depict him saying, “The coronavirus, this is their new hoax.”

101. The subtitles used in the PUSA ads represent that the two phrases “The coronavirus,” and “this is their new hoax” are one complete sentence stated by candidate Trump, through the use of a capitalization of the letter “T” in “the” at the beginning of the sentence, by using a lowercase “t” in the word “this,” and by adding a period at the end.

102. The Manufactured Statement in the PUSA ads falsely represents candidate Trump as saying, “The coronavirus, this is their new hoax.”

103. PUSA asserted and asserts that the Manufactured Statement was made by candidate Trump at a campaign event.

104. The PUSA ads knowingly and intentionally misattributed the Manufactured Statement to candidate Trump – a statement that PUSA knew that candidate Trump never said.

105. The Manufactured Statement was and is false because candidate Trump did not utter the words, “The coronavirus, this is their new hoax.” PUSA knowingly and intentionally falsely attributed the Manufactured Statement to candidate Trump in the PUSA ads.

106. The false Manufactured Statement is materially different than the actual statements made by candidate Trump at the South Carolina Campaign Speech. The Manufactured Statement was and is defamatory of the Trump Campaign.

107. Candidate Trump’s actual remarks at the South Carolina Campaign Speech expressed ideas materially different than the Manufactured Statement. Among other things, candidate Trump discussed the Democrats’ politicization of the coronavirus pandemic and Democrats’ attack on the Trump administration’s response to the coronavirus and the sufficiency and timing of its response. After describing those tactics, candidate Trump said “[t]hey tried the

impeachment hoax. That was on a perfect conversation. They tried anything, they tried it over and over, they've been doing it since he got in. It's all turning, they lost. It's all turning, think of it, think of it. And this is their new hoax.”

108. PUSA knew and knows that the Manufactured Statement was not actually said by candidate Trump as represented and that the Manufactured Statement was materially different than the words actually spoken by candidate Trump at the South Carolina Campaign Speech.

109. The audio and textual depictions comprising the Manufactured Statement in the PUSA ads are false and defamatory of the Trump Campaign.

110. The Manufactured Statement in the PUSA ads is of and concerning the Trump Campaign and it is defamatory of the Trump Campaign. The PUSA ads falsely represent that the Manufactured Statement was made by candidate Trump and persons who view and/or hear the Manufactured Statement in the PUSA ads would understand it to express the position of the Trump Campaign.

111. The Manufactured Statement in the PUSA ads is defamatory of the Trump Campaign and it was included in the ads to diminish the reputation of the Trump Campaign in the estimation of the citizenry and deter persons from dealing with the Trump Campaign, including, by not voting for candidate Trump's reelection.

112. The PUSA ads including the Manufactured Statement were, and are, communicated to third persons.

113. The Manufactured Statement in the PUSA ads was made to diminish and harm the reputation of Donald J. Trump as a candidate for reelection for President of the United States and was made to harm the reputation of the Trump Campaign as the organization whose purpose is to obtain that reelection.

114. The Manufactured Statement in the PUSA ads is of and concerning the Trump Campaign, in that the ads represent that the Manufactured Statement was made by the candidate for reelection, the President, and the PUSA ads are intended to affect the outcome of the election.

115. When it created and distributed the PUSA ads, PUSA had actual knowledge that the Manufactured Statement in the PUSA ads was false and/or acted in reckless disregard of the falsity of the Manufactured Statement. In distributing the PUSA ads and broadcasting the PUSA ads on TV networks throughout the country, PUSA had actual knowledge of the falsity of the Manufactured Statement and/or acted with reckless disregard as to the falsity of the Manufactured Statement.

116. The PUSA's knowing and intentional distribution of fabricated statements, that is, the Manufactured Statement in the PUSA ads, constitutes actual malice, knowledge of or reckless disregard for the falsity of the statements.

117. PUSA was put on notice that the Manufactured Statement in the PUSA ads was false by the widely distributed publications of the independent fact-checkers.

118. PUSA also had notice that the Manufactured Statement in the PUSA ads was false when it was made aware of the Cease and Desist Letters from the Trump Campaign to television stations airing the ads.

119. PUSA knew of the falsity of the Manufactured Statement and/or acted with reckless disregard as to the falsity of the Manufactured Statement in the PUSA ads when it continued to broadcast the PUSA ads after it was put on notice that the Manufactured Statement in the ad was deemed false.

120. PUSA knew of the falsity of the Manufactured Statement and/or acted with reckless disregard as to the falsity of the Manufactured Statement in the PUSA ads when it

continued to broadcast the PUSA ads after it was made aware of the Cease and Desist Letters from the Trump Campaign to television stations airing the ads.

121. The false Manufactured Statement in the PUSA ads has caused and continues to cause actual damages to the Trump Campaign.

122. In creating and distributing the PUSA ads containing the false and defamatory Manufactured Statement, and in communicating with TV stations to urge them to continue airing the PUSA ads, PUSA acted with malice or reckless disregard for the Trump Campaign's rights, therefore an award for punitive damages is appropriate.

WHEREFORE,

plaintiff demands the following relief:

(a) Judgment in its favor and against defendant Priorities USA Action for damages in an amount to be determined at trial;

(b) Costs, disbursements, and attorneys' fees to the maximum amount allowed by law;
and

(c) For such further relief as the Court deems just and equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY OF THE CLAIMS ASSERTED IN THIS COMPLAINT.

Dated this 18th day of June, 2020.

By:

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