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August 7, 2020

VIA ECF

Hon. Sarah Netburn  
U.S. District Court for the Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

Re: *Rich v. Fox News Network, LLC*, No. 18-cv-2223

Dear Judge Netburn:

I write on behalf of Plaintiffs Joel and Mary Rich, with the consent of all parties, to set interim deadlines for the discovery schedule, as ordered by the Court following the hearing this past Tuesday, August 4, 2020. Dkt. 170.

All discovery is set to conclude by December 31, 2020. Dkt. 170. Counsel for Fox News, Ms. Zimmerman, and Plaintiffs agree to the interim deadlines below:

<b>Event</b>	<b>Deadline</b>
Parties Substantially Complete Document Production	August 26, 2020
Deadline to Issue Third Party Subpoenas	September 3, 2020
Deadline for Service of Third Party Subpoenas	October 16, 2020
Fact Depositions Close	October 30, 2020
Expert Reports Due <sup>1</sup>	November 13, 2020

<sup>1</sup> Subject to the parties in good faith timely providing relevant and necessary discovery.

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Response Reports Due	December 4, 2020
Expert Depositions Close	December 23, 2020

Counsel for Mr. Butowsky has requested that Mr. Butowsky not be held to the interim deadlines for fact discovery. Plaintiffs oppose this request. Fox News and Ms. Zimmerman do not oppose this request. The positions of Plaintiffs and Mr. Butowsky are set forth below.

#### Position of Mr. Butowsky

After the August 4, 2020 hearing, Mr. Butowsky's counsel contacted his client at the hospital to check in with his client about the scheduled surgery. Counsel received the shocking news that Mr. Butowsky had had a serious medical emergency, had stopped breathing, went into critical organ failure and clinically died. By an extraordinary stroke of good luck, Mr. Butowsky's wife had called her husband's phone just before the incident and was extremely concerned when her husband did not respond. Mrs. Butowsky was able to reach a nurse who checked on Mr. Butowsky and immediately contacted the reanimation team, which was able to bring Mr. Butowsky back to life. Mr. Butowsky remains in serious condition and is in pain from the repeated pressure applied to his chest to restart his heart. He is, however, lucid and is committed to doing his best to comply with his obligations. It is not clear when he will be strong enough to undergo the necessary hip replacement surgery (he has been living without a hip since his last operation) and he will need time to recover after the surgery. Given these extraordinary medical developments, it would be extremely harsh (indeed, inhuman) to hold Mr. Butowsky to interim fact deadlines when has committed to respect the overall order of the court to the extent possible and agrees to abide by the parties' agreed upon interim expert deadlines, including that expert reports be submitted by November 13, 2020, and response reports be submitted by December 4, 2020.

#### Position of Plaintiffs

Plaintiffs are sensitive to Mr. Butowsky's health concerns and will, of course, be mindful of those issues as discovery proceeds. However, Plaintiffs do not believe that Mr. Butowsky should be relieved whole-cloth from the reasonable interim fact discovery deadlines that all other parties have agreed to. First, Mr. Butowsky's health issues have been longstanding. Nevertheless, in addition to other activities, he *has filed as a plaintiff* and pursued at least *six* cases since April 2018, including some that overlap substantially with this litigation. Indeed, Mr. Butowsky even hired lawyers to sue *Plaintiffs' counsel* (including associates), in a Texas case that was ultimately dismissed. In another case Mr. Butowsky hired counsel to handle, Mr. Butowsky opposed a request by other parties to extend discovery deadlines, stating in relevant part that “[d]elay prejudices victims – evidence is lost,

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memories fade, costs increase.” (*Butowsky v. Folkenflik, et al.*, No. 18-cv-442, E.D. Tex., D.I. 41, at 2.)

Second, Mr. Butowsky’s statement concerning prejudice is a real concern here. Just to give one example, Mr. Butowsky’s counsel recently informed Plaintiffs that Mr. Butowsky’s phone “crashed in or about September 2019.” Plaintiffs are concerned that relieved of the reasonable fact discovery deadlines that Plaintiffs, Fox, and Ms. Zimmerman have agreed to, further evidentiary prejudice may ensue. Moreover, because Mr. Butowsky’s evidence and testimony are critical to this case, relieving him of the interim deadlines will prejudice Plaintiffs’ preparation of their expert reports.

Third, there is no reason for Mr. Butowsky to be relieved of these reasonable interim deadlines. In this very lawsuit, Butowsky has produced documents to Fox, and he has agreed to Plaintiffs’ search terms and represented that he is in the process of preparing a production of documents to Plaintiffs, many of which have already been searched for and produced in connection with his many other related litigations. And as Plaintiffs have learned during discovery, after this lawsuit was filed, Fox and Butowsky agreed to a settlement agreement requiring Butowsky’s cooperation with Fox.

Again, Plaintiffs are mindful of Mr. Butowsky’s health and, if there arises a particular issue, Plaintiffs will of course reasonably accommodate him. But in Plaintiffs’ view, there is no reason why Mr. Butowsky should not comply with the reasonable deadlines set forth herein.

Respectfully submitted,

*s/ Arun Subramanian*

Arun Subramanian

*Counsel for Plaintiffs Joel and Mary Rich*

*With consent,*

Joseph M. Terry

*Counsel for Defendant*

*Fox News Network, LLC*

David H. Stern

*Counsel for Defendant*

*Malia Zimmerman*

Eden P Quainton

*Counsel for Defendant Ed Butowsky*

Cc: All Counsel of Record