SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SMARTMATIC USA CORP., SMARTMATIC INTERNATIONAL HOLDING B.V., and SGO CORPORATION LIMITED,

Plaintiffs,

-against-

FOX CORPORATION, FOX NEWS NETWORK LLC, LOU DOBBS, MARIA BARTIROMO, JEANINE PIRRO, RUDOLPH GIULIANI, and SIDNEY POWELL,

Defendants.

COMPLAINT

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Plaintiffs Smartmatic USA Corp, Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, "Smartmatic"), through their attorneys, bring this complaint against Defendants Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell (collectively, "Defendants").

INTRODUCTION[1]

1. The Earth is round. Two plus two equals four. Joe Biden and Kamala Harris won the 2020 election for President and Vice President of the United States. The election was not stolen, rigged, or fixed. These are facts. They are demonstrable and irrefutable.

2. Defendants have always known these facts. They knew Joe Biden and Kamala Harris won the 2020 U.S. election. They knew the election was not stolen. They knew the election was not rigged or fixed. They knew these truths just as they knew the Earth is round and two plus two equals four.

3. Defendants did not want Joe Biden and Kamala Harris to win the election. They wanted President Donald Trump and Vice President Michael Pence to win re-election. Defendants were disappointed. But they also saw an opportunity to capitalize on President Trump's popularity by inventing a story. Defendants decided to tell people that the election was stolen from President Trump and Vice President Pence.

4. Defendants had an obvious problem with their story. They needed a villain. They needed someone to blame. They needed someone whom they could get others to hate. A story of

[1] Smartmatic's election technology and software has been used in voting jurisdictions that are predominately Conservative, Liberal, Republican, Democrat, and other. Smartmatic is apolitical. Smartmatic does not take issue with legal challenges being raised regarding the rules implemented by voting jurisdictions during the 2020 U.S. election and the adherence to those rules. Smartmatic's lawsuit is focused on the fact that its election technology and software were not used to fix, rig, or steal the 2020 U.S. election.

good versus evil, the type that would incite an angry mob, only works if the storyteller provides the audience with someone who personifies evil.

5. Without any true villain, Defendants invented one. Defendants decided to make Smartmatic the villain in their story. Smartmatic is an election technology and software company. It was incorporated in Delaware and its U.S. operations are headquartered in Florida. In the 2020 U.S. election, Smartmatic provided election technology and software in Los Angeles County. Nowhere else. Smartmatic had a relatively small, non-controversial role in the 2020 U.S. election.

6. Those facts would not do for Defendants. So, the Defendants invented new ones. In their story, Smartmatic was a Venezuelan company under the control of corrupt dictators from socialist countries. In their story, Smartmatic's election technology and software were used in many of the states with close outcomes. And, in their story, Smartmatic was responsible for stealing the 2020 election by switching and altering votes to rig the election for Joe Biden and Kamala Harris.

7. Having invented their story, and created their villain, Defendants set about spreading the word. In November and December 2020, Fox News broadcasted thirteen (13) reports stating and implying that Smartmatic had stolen the 2020 U.S. election. They repeated the story in articles and social media postings. Night after night, publication after publication, Fox News reached out to its millions of viewers and readers around the world with a story: Joe Biden and Kamala Harris did not win the 2020 election; Smartmatic stole the election for them.

8. Defendants' story evolved over time as they claimed evidence had come to their attention supporting the story. The story came to consist of eight themes:

- Smartmatic's election technology and software were widely used in the 2020 U.S. election, including in six states with close outcomes;
- Smartmatic's election technology and software were used by Dominion Voting Systems Corporation ("Dominion") during the 2020 U.S. election;

- Smartmatic's election technology and software were used to steal the 2020 U.S. election by rigging and fixing the vote;
- Smartmatic's election technology and software sent votes to foreign countries for tabulation and manipulation during the 2020 U.S. election;
- Smartmatic's election technology and software were compromised and hacked during the 2020 U.S. election;
- Smartmatic was previously banned from being used in U.S. elections;
- Smartmatic is a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries; and,
- Smartmatic's election technology and software were designed to rig and fix elections.

9. Defendants' story was a lie. All of it. And they knew it. But, it was a story that sold. Millions of individuals who saw and read Defendants' reports believed them to be true. Smartmatic and its officers began to receive hate mail and death threats. Smartmatic's clients and potential clients began to panic. The company's reputation for providing transparent, auditable, and secure election technology and software was irreparably harmed. Overnight, Smartmatic went from an under-the-radar election technology and software company with a track record of success to the villain in Defendants' disinformation campaign.

10. Smartmatic's loss was Defendants' gain. Fox News used the story to preserve its grip on viewers and readers and curry favors with the outgoing administration – one of their anchors was even able to get a pardon for her ex-husband. Ms. Powell used the story to raise money and enrich herself. Mr. Giuliani used the story to guarantee himself a flow of funds from the sitting President and to sell products. Defendants knew the story could not change the outcome of the election. It could, and did, make them money.

11. The story, of course, did more than just make Defendants' money and jeopardize Smartmatic's survival. The story undermined people's belief in democracy. The story turned

neighbor against neighbor. The story led a mob to attack the U.S. Capitol. Defendants started a fire for selfish and financial reasons and they cared not the damage their story caused to Smartmatic, its officers and employees, and the country.

12. With this action, Smartmatic says: Enough. Facts matter. Truth matters. Defendants engaged in a conspiracy to spread disinformation about Smartmatic. They lied. And they did so knowingly and intentionally. Smartmatic seeks to hold them accountable for those lies and for the damage that their lies have caused.

13. Smartmatic brings sixteen (16) claims against Defendants for defamation and disparagement. Smartmatic seeks to recover in excess of $2.7 billion for the economic and non-economic damage caused by Defendants' disinformation campaign as well as punitive damages. Finally, Smartmatic seeks a declaration requiring Defendants to fully and completely retract their false statements and implications.

PARTIES

14. Plaintiff Smartmatic USA Corp is an election technology and software company. The company's principal place of business is located in Boca Raton, Florida. It is incorporated in Delaware. During the 2020 U.S. election, Smartmatic USA Corp provided election technology and software for Los Angeles County. Its election technology and software were not used in any other county or State in the 2020 U.S. election.

15. Plaintiff Smartmatic International Holding B.V. owns Smartmatic USA Corp (100% ownership). The company's principal place of business is located in Amsterdam, Netherlands. It is incorporated in the Netherlands. Smartmatic International Holding B.V. owns multiple companies operating under the Smartmatic brand in almost two dozen countries.[2]

[2] Smartmatic International Holding B.V. owns election technology and software companies in United States (Smartmatic USA Corp), Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore,

Smartmatic International Holding B.V. did not play any role in the 2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp for Los Angeles County.

16. Plaintiff SGO Corporation Limited owns Smartmatic International Holding B.V. (100% ownership). The company's principal place of business is located in London, United Kingdom. It is incorporated in the United Kingdom. SGO Corporation Limited is the parent company of Smartmatic International Holdings B.V. SGO Corporation also owns significant stock in other companies that were damaged by the disinformation campaign, including Airlabs Holdings Limited ("Airlabs") and Folio Technologies Limited ("Folio"). SGO Corporation Limited did not play any role in the 2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp for Los Angeles County.

17. Smartmatic USA Corp, Smartmatic International Holding B.V., and SGO Corporation Limited are collectively referred to as "Smartmatic" in this complaint. Each of the companies owned by SGO Corporation Limited, directly or through Smartmatic International Holding B.V., was injured as a result of the Defendants' disinformation campaign that irreparably tarnished the Smartmatic brand (corporate and product) in the United States and throughout the world.

18. Defendant Fox Corporation is one of the most powerful and far reaching media conglomerates in the world. The company's principal place of business is located in New York, New York. It is incorporated in Delaware. Fox Corporation owns Foxcorp Holdings LLC (100% ownership), Foxcorp Holdings LLC owns Fox Television Holdings LLC (100% ownership), Fox

Netherlands, Mexico, Ecuador, Brazil, Estonia, Taiwan, and the Philippines as well as branches in Colombia, Argentina, Honduras, Pakistan, Italy, Jamaica, and El Salvador.

Holdings LLC owns Fox Television Stations LLC (100% ownership), and Fox Television Stations LLC owns Fox News Network LLC (100% ownership).[3]

19. Defendant Fox News Network LLC is one of the most powerful and far reaching news organizations in the world. The company's principal place of business is located in New York, New York. It is incorporated in Delaware. Fox News Network LLC operates Fox News and Fox News Digital. Fox News averages over 3 million viewers during its primetime evening news program and nearly 2 million daytime viewers. Fox News Digital averages over 2.5 billion multiplatform views and over 5 billion multiplatform minutes.

20. Fox Corporation and Fox News Network LLC are collectively referred to as "Fox News" in this complaint. Fox News published over 100 false and misleading statements about Smartmatic during the disinformation campaign. It used the disinformation campaign to its financial benefit by currying favor with the outgoing administration and President Trump's supporters, thereby securing it a position as the "most-watched cable news channel in history." Likewise, Fox News used the disinformation campaign to further boost viewership of Fox News Digital. Fox News Digital secured double-digit increases in all key performance metrics due, in no small part, to the disinformation campaign.

21. Defendant Lou Dobbs is an award-winning journalist and host of *Lou Dobbs Tonight*. Fox News describes *Lou Dobbs Tonight* as the "#1 news program on business television, which features a breakdown of the day's top stories and how they impact the economy." Mr. Dobbs presents himself to readers and viewers as a provider of factual information – not opinion, rhetoric, or spin. However, contrary to his public persona, he was one of the primary proponents and

[3] On information and belief, Foxcorp Holdings LLC, Fox Television Holdings LLC and Fox Television Stations LLC have their principal place of business in New York, New York and are incorporated in Delaware.

speakers for the disinformation campaign against Smartmatic. He is a resident of Sussex, New Jersey and Fox News broadcasts *Lou Dobbs Tonight* from New York, New York.

22. Defendant Maria Bartiromo describes herself as a "journalist" and "news anchor" as well as the recipient of "numerous prestigious awards." She is host of *Sunday Morning Futures with Maria Bartiromo* and *Mornings with Maria*. During her programs, Ms. Bartiromo "brings big business newsmakers to the table to explore the smartest money-making opportunities for the week ahead." Ms. Bartiromo presents herself to readers and viewers as a provider of factual information – not opinion, rhetoric, or spin. However, contrary to her public persona, she was one of the primary proponents and speakers for the disinformation campaign against Smartmatic. Ms. Bartiromo is a resident of New York, New York and Fox News broadcasts her programs from New York, New York.

23. Defendant Jeanine Pirro describes herself as a "highly respected District Attorney, Judge, author & renowned champion of the underdog" and Fox News highlights her as having a "notable legal career" spanning "over 30 years." She is host of *Justice with Judge Jeanine*. During her program, Ms. Pirro provides "legal insights on the news of the week." Ms. Pirro presents herself to readers and viewers as a provider of factual information – not opinion, rhetoric, or spin. However, contrary to her public persona, she was one of the primary proponents and speakers for the disinformation campaign against Smartmatic. Ms. Pirro is a resident of Rye, New York and is licensed to practice law in New York, her place of business (Fox News) is located in New York, New York, and Fox News broadcasts *Justice with Judge Jeanine* from New York, New York.

24. Mr. Dobbs, Ms. Bartiromo, Ms. Pirro and Fox News are collectively referred to as "Fox" or "the Fox Defendants" in this complaint. At all relevant times, Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro acted under the direction of Fox News, Fox News authorized and condoned the

actions of Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro; and, Fox News ratified the actions of Mr. Dobbs, Ms. Bartiromo and Ms. Pirro.

25. Defendant Rudolph Giuliani is a lawyer, former federal prosecutor, and former Mayor of New York. Mr. Giuliani presents himself to readers and viewers as a provider of factual information – not opinion, rhetoric, or spin. However, contrary to his public persona, he was one of the primary proponents and speakers of the disinformation campaign against Smartmatic. Mr. Giuliani is a resident of New York, New York, and is licensed to practice law in New York, and his place of business (Rudolph W Giuliani, PLLC) is located in New York, New York.

26. Defendant Sidney Powell is a lawyer and former federal prosecutor. Ms. Powell presents herself to readers and viewers as a provider of factual information – not opinion, rhetoric, or spin. However, contrary to her public persona, she was one of the primary proponents and speakers of the disinformation campaign against Smartmatic. Ms. Powell is a resident of Dallas, Texas.

27. The Fox Defendants, Mr. Giuliani, and Ms. Powell are collectively referred to as "Defendants" in this complaint. After the November 2020 election, Mr. Giuliani and Ms. Powell conspired to spread a false narrative regarding the outcome of the election by disparaging and defaming Smartmatic. The conspiracy served their personal and financial interest as they benefitted from creating a perception that the 2020 U.S. election had been rigged and stolen by Smartmatic. Mr. Giuliani and Ms. Powell enlisted and used Fox News to further this conspiracy. Fox News also had a financial interest in creating the perception that the 2020 U.S. election had been rigged and stolen by Smartmatic. The Fox Defendants, Mr. Giuliani, and Ms. Powell agreed to use Fox News' broadcasting base in New York, New York to disseminate the disinformation campaign, which ensured the story would reach the broadest audience possible.

JURISDICTION & VENUE

28. The Court has personal jurisdiction over Defendant Fox Corporation pursuant to CPLR § 301. New York is the principal place of business of Fox Corporation.

29. The Court has personal jurisdiction over Defendant Fox News Network LLC pursuant to CPLR § 301. New York is the principal place of business of Fox News Network LLC. Fox News Network LLC broadcast the defamatory and disparaging statements (verbal) at issue in the complaint from its operations in New York, New York. Fox News Network LLC published the defamatory and disparaging statements (written/posted) at issue in the complaint from its operations in New York, New York. Fox News Network LLC used the disinformation campaign to solicit viewers and readers in New York, New York. New York was the largest television audience market in the United States at the time of the disinformation campaign with over 17 million viewers.

30. The Court has personal jurisdiction over Defendant Lou Dobbs pursuant to CPLR § 302. New York is Mr. Dobbs' principal place of business (Fox News). Mr. Dobbs made the defamatory and disparaging statements at issue in the complaint knowing and intending for them to be broadcast (verbal) and published (written/posted) from New York, New York. Mr. Dobbs used the disinformation campaign to solicit viewers and readers in New York, New York.

31. The Court has personal jurisdiction over Defendant Maria Bartiromo pursuant to CPLR § 301. New York is Ms. Bartiromo's residence and principal place of business (Fox News). Ms. Bartiromo made the defamatory and disparaging statements at issue in the complaint knowing and intending for them to be broadcast (verbal) and published (written/posted) from New York, New York. Ms. Bartiromo used the disinformation campaign to solicit viewers and readers in New York, New York.

32. The Court has personal jurisdiction over Defendant Jeanine Pirro pursuant to CPLR § 301. New York is Ms. Pirro's residence and principal place of business (Fox News). Ms. Pirro made the defamatory and disparaging statements at issue in the complaint knowing and intending for them to be broadcast (verbal) and published (written/posted) from New York, New York. Ms. Pirro used the disinformation campaign to solicit viewers and readers in New York, New York.

33. The Court has personal jurisdiction over Defendant Rudolph Giuliani pursuant to CPLR § 301 for six reasons. (1) New York is Mr. Giuliani's residence and principal place of business (Rudolph W. Giuliani, PLLC). (2) Mr. Giuliani made the defamatory and disparaging statements at issue in the complaint knowing and intending for them to be broadcast (verbal) and published (written/posted) from New York, New York by a New York-based organization. (3) Mr. Giuliani authorized and approved the broadcasting and publication of his statements to be made from New York and through a New York-based news organization. (4) On information and belief, Mr. Giuliani coordinated with New York-based reporters and employees of Fox News regarding the disinformation campaign and his statements before appearing on the Fox News programs at issue in the complaint. (5) Mr. Giuliani used the disinformation campaign to solicit money from individuals and corporations – including those located in New York, New York – for President Donald Trump. On information and belief, some of the money solicited for President Trump would be used to pay Mr. Giuliani. (6) Mr. Giuliani intentionally took advantage of New York's unique resources, including serving as the headquarters and publication center for Fox News, to disseminate the disinformation campaign and profit from the disinformation campaign.

34. The Court has personal jurisdiction over Defendant Sidney Powell pursuant to CPLR § 302 for five reasons. (1) Ms. Powell made the defamatory and disparaging statements at issue in the complaint knowing and intending for them to be broadcast (verbal) and published

(written/posted) from New York, New York by a New York-based organization. (2) Ms. Powell authorized and approved the broadcasting and publication of her statements to be made from New York and through a New York-based news organization. (3) On information and belief, Ms. Powell coordinated with New York-based reporters and employees of Fox News regarding the disinformation campaign and her statements before appearing on the Fox News programs at issue in the complaint. (4) Ms. Powell used the disinformation campaign to solicit money from individuals and corporations – including those located in New York, New York – for contributions to her so-called "legal defense" fund and Super PAC. (5) Ms. Powell intentionally took advantage of New York's unique resources, including serving as the headquarters and publication center for Fox News, to disseminate the disinformation campaign and profit from the disinformation campaign.

35. The Court also has personal jurisdiction over Defendant Sidney Powell pursuant to CPLR § 302 as a co-conspirator with Mr. Giuliani and the Fox Defendants, both of whom committed tortious acts (including disparagement) in New York. Ms. Powell and Mr. Giuliani were two of the central driving forces behind the conspiracy to portray Smartmatic as a villain. After November 3, 2020, Ms. Powell and Mr. Giuliani decided to fabricate a story that the 2020 U.S. election had been rigged and stolen in favor of Joe Biden and Kamala Harris by Smartmatic. They further decided to jointly disseminate the false story to the largest audience possible, including through appearances on news programs such as those broadcasted and published by Fox News. And, further, they decided to corroborate and support each other's statements about Smartmatic, which would add credibility to the false story. On information and belief, Ms. Powell and Mr. Giuliani then sought out news platforms that would join their conspiracy to spread a false story.

36. The Fox Defendants were voluntary and knowing members of the conspiracy with Ms. Powell and Mr. Giuliani. Like Ms. Powell and Mr. Giuliani, the Fox Defendants knew there was no factual basis for the statements being made about Smartmatic. And, like Ms. Powell and Mr. Giuliani, the Fox Defendants had a personal and financial interest in disseminating a narrative that Smartmatic stole and rigged the 2020 U.S. election for Joe Biden and Kamala Harris. With an alignment of interest, the Fox Defendants agreed they would use Fox News' broadcasting and publication power in New York to disseminate the disinformation campaign, including disseminating statements made by Ms. Powell and Mr. Giuliani regarding Smartmatic. On information and belief, Ms. Powell and Mr. Giuliani sought out and encouraged the Fox Defendants to use Fox News' New York-based operations to spread their false statements about Smartmatic, which the Fox Defendants agreed to do as part of the conspiracy.

37. Venue is proper in New York County pursuant to CPLR § 503(a) & (c). Fox Corporation, Fox News Network LLC, Ms. Bartiromo, Ms. Pirro, and Mr. Giuliani reside in New York County. Further, Defendants published and republished the defamatory and disparaging statements at issue in the complaint from Fox News' operations in New York County. New York County is the county in which a substantial part of the events giving rise to Smartmatic's claims occurred.

FACTUAL ALLEGATIONS

38. Smartmatic is a victim of Defendants' desire for fame and fortune. Defendants – journalists and lawyers – are ethically bound to provide factually accurate information. Each of the Defendants abused the trust placed in them by viewers and readers in the United States and around the world. Defendants' disinformation campaign was not only a betrayal of their ethical

obligations that caused irreparable damage to Smartmatic, but it contributed to an erosion of trust and civility in the country.

I. Smartmatic's Role as an Election Technology Company

39. Antonio Mugica and Roger Piñate founded Smartmatic in 2000 in Boca Raton, Florida. At the start, Smartmatic focused mainly on the banking industry, offering secure online protocols enabling hyper-secure interconnection between digital devices.

40. Smartmatic turned its focus to election technology and software following the 2000 U.S. election and the "hanging chad" controversy in Florida. Mr. Mugica and Mr. Piñate realized that flawed technology had given election automation a bad reputation. With that in mind, they began to develop advanced voting platforms to restore people's faith in technology-driven elections. They wanted to take the same technology built for secure bank automation and use it to register, count, and transmit votes. They believed this could give people confidence that their ballots would be accurately counted.

41. Since 2003, Smartmatic's election technology has processed more than 5 billion secure votes worldwide without a single security breach. Smartmatic has provided election services and implemented election technologies for election commissions in more than 25 countries on five continents.

42. With each election, Smartmatic's mission is, and always has been, to increase integrity in the democratic process through enhanced citizen engagement and trust in election systems. Smartmatic harnesses the full power of technology to deliver reliable, accurate and auditable election results.

A. Smartmatic grew from a small start-up into a successful multi-billion-dollar enterprise.

43. Today, Smartmatic provides end-to-end election services to local, state, and national governments. Its portfolio of products has grown to include a comprehensive suite of technologies and services to make every phase of the election process more efficient and transparent.

44. Smartmatic's products now include electronic voting machines (voters vote electronically using a voting machine with a touch screen, and those machine counts the votes as they are made), electronic counting machines (voters vote with paper ballots which can be counted electronically), ballot marking devices (voters make their selection on touch screen machines that then print a paper ballot to be counted later by the government election authority), voter management (voter databases are built using biographic and/or biometric information to ensure that the voters are legally entitled to vote, and that there is one-voter/one-vote), poll worker support (technology facilitates poll station administration and enforcement of regulations), online voting (convenient and verifiable online – remote, over the internet – voting platforms) and election management platforms (allows authorities to configure their systems, monitor operations, announce results and train staff).

45. Smartmatic's growth and product development is a story of industry-leading advancements and successes through relentless attention to reliability, accuracy and auditability. The following are just some of the company's achievements over the years:

46. In 2004, Smartmatic's technology was used in the first automated election in Venezuela. It was the first election in the world to have both an electronic record and a paper trail of every vote made, which could be cross-checked and audited, thus ensuring the accuracy of election totals.

47. From 2005 to 2007, Smartmatic's election technology and software were used in multiple U.S. states as well as Washington, D.C.

48. In 2007, Smartmatic's election technology and software were used in Curacao's election and results were reported in record time.

49. In 2008, Smartmatic won a complex bid to run the Philippines' first fully automated elections, which were conducted two years later.

50. In 2009, Mexico used Smartmatic's biometric technology to register citizens aged 5-17 so that citizens could get new identity cards. That same year, Smartmatic set the record for fastest biometric voter registration in the world by registering five million Bolivians in record time.

51. In 2010, Smartmatic helped deliver the largest fully outsourced automated election in history. Fifty million voters in the Philippines participated in the general election, and voters were able to see the results in less than a day. That same year, the United Nations Development Program selected Smartmatic to supply biometric technology and associated services to upgrade Zambia's voter register. The number of Zambians registered to vote increased by 40%.

52. In 2011, Smartmatic won an 18-year contract to implement and operate an automated fare collection and fleet management system in Cartagena.

53. In 2012, Smartmatic set up election services for Brazil and hired and trained technicians to work across Brazil's thousands of municipalities with more than 500,000 pieces of election equipment. Belgium awarded Smartmatic a contract to design and manufacture its election hardware and software for the next 15 years. That same year, Smartmatic deployed 20,000 machines for Belgium's automated election.

54. In 2013, Smartmatic's technology processed more than 50 million ballots in just 10 hours in the Philippines. Venezuela organized its Presidential elections in 34 days (record time)

thanks to Smartmatic technology and services. All parties audited the voting platform 15 times, contributing to the public's trust in the election results. And, in that year, Haiti selected Smartmatic to modernize Haiti's national ID and civil registry system.

55. In 2014, Smartmatic's technology was used in Ecuador's sectional election and the official results were announced in less than 60 minutes. Belgium conducted the first European Union Parliamentary election using a voter-verified, e-voting solution with Smartmatic's technology. Bulgaria piloted an e-voting system with a tailor-made Smartmatic solution. And, that same year, Smartmatic technology was used to expedite the presidential election results in Brazil in fifteen of the country's most remote states.

56. In 2015, Smartmatic's technology was used to improve public safety in the Philippines. In the province of Bataan, a Command Center powered by Smartmatic's technology was created to help authorities improve public safety and emergency management. That same year, the Election Commission of Zambia partnered with Smartmatic to continue updating its biometric electoral register. Smartmatic provided Zambia with 2000 enrollment devices to register new voters and update existing information. Smartmatic also conducted its first election project in Argentina. The electronic voting solution delivered official results 45 minutes after the polls closed.

57. In 2016, Smartmatic deployed 30,500 biometric devices to authenticate voters in Uganda. Smartmatic's online voting system was used in Utah's Republican caucus. It was the world's first election using blockchain technology. For the third time, Smartmatic supplied technology and services to the Philippines. Over 80% of the results were transmitted by election night. Brazil used Smartmatic's technology during its municipal election and again streamlined the process by using Smartmatic data and voice communications technology in the fifteen most remote

states. And, that same year, authorities in Oman used Smartmatic vote counting machines in each polling station.

58. In 2017, Sierra Leone used Smartmatic's technology to modernize its national civil registry by equipping 2,600 registration sites. Argentina used Smartmatic's biometric technology to facilitate voter authentication. Smartmatic also helped the Lombardy region in Italy conduct the country's first fully automated election. Armenia used Smartmatic's biometric devices to manage voters in polling centers in the country's Parliamentary Elections. And, in that same year, Estonia set a new record for online voting participation at 31% during the local elections held in October using Smartmatic's election technology, which was developed with Smartmatic's local partner (Cybernetica).

59. In 2018, the Philippines continued to modernize its elections with Smartmatic by acquiring more than 97,000 vote-counting machines. In May, voters in the northernmost province of Norway used the online voting solution developed by the Smartmatic-Cybernetica Centre of Excellence for Internet Voting during a referendum and 85.5% of the population used online voting. And, that same year, Belgium used Smartmatic's voting machines with assistive technology for voters with visual disabilities.

60. In 2019, Estonia once again set a new participation record for online voting using Smartmatic's technology. Over 44% of all votes during its Parliamentary Elections were cast through online voting. Smartmatic's election technology was used in Estonia, Belgium, and Bulgaria during the elections to the European Parliament. Belgium deployed over 23,000 e-voting machines at 4,200 polling stations and Bulgaria deployed 3,000 e-voting machines. The Philippines used Smartmatic technology to conduct its fourth national automated election and a manual audit showed 99.9953% accuracy.

B. Smartmatic's success was built on its reputation for secure, reliable, and auditable election technology and software.

61. The secret to Smartmatic's success has been showing its commitment to its mission statement: to provide secure, reliable, and auditable election technology and software. Counties, states and countries that choose to use Smartmatic's election technology and software understand that they are using a technology that has processed over 5 billion votes without any security breaches and with an auditable paper trail demonstrating that the elections were not rigged, hacked, or stolen.

62. One of Smartmatic's best marketing tools are case studies. Case studies are opportunities for Smartmatic to demonstrate to a potential client how Smartmatic's election technology and software have been used by other counties, states and countries to improve the voter experience and provide secure, reliable, and auditable results. These case studies demonstrate, time and time again, that Smartmatic's election technology and software can ensure quick and accurate voting results.

63. Another one of Smartmatic's key marketing tools are references. Most opportunities for new clients include providing referrals who can talk about their experience with Smartmatic's election technology and software. Smartmatic's past successes, which the referrals discuss, are critical to new clients. New clients want to know that Smartmatic's election technology and software are secure, reliable, and auditable. That is what they learn from Smartmatic's referrals.

64. Finally, Smartmatic is also fortunate to have been recognized as one of the best election technology and software companies in the world. For example, in 2005, The Carter Center and the European Union identified Smartmatic's election technology as one of the most secure, reliable and auditable election technologies in the world. In 2012, former President Jimmy Carter

called Smartmatic's solution "the best voting system in the world." These accolades and recognitions by some of the world's foremost election authorities are yet another key to Smartmatic's success. Its reputation as one of the "best voting systems in the world" is important for expanding existing relationships and developing new relationships with counties, states and countries looking to improve their election technology.

C. Smartmatic had a relatively small, non-controversial role in the 2020 U.S. election.

65. The 2020 U.S. election was a turning point for Smartmatic. In June 2018, Los Angeles County selected Smartmatic to help election authorities manufacture and implement a new election system for the County. This was a significant opportunity for Smartmatic to once again demonstrate the security, reliability and auditability of its election technology – this time on an even bigger stage. Success in Los Angeles County positioned Smartmatic to market its election technology and software to other counties and states in the United States and to voting jurisdictions around the world who were inclined to follow Los Angeles County's lead.

1. Los Angeles County introduced a new Voting Solutions for All People initiative for the 2020 U.S. election.

66. Los Angeles County is the nation's most populous voting jurisdiction with more than 5.4 million registered voters. Los Angeles County is one of the most complex election jurisdictions because of its geographic size, logistics, high bar for certification requirements, multiple language support requirements, and legally-mandated accessibility features for voters with disabilities.

67. Since 2009, the Los Angeles County's Registrar-Recorder/County Clerk (the "Department") had been working to improve the voting experience through its Voting Solutions for All People ("VSAP") initiative. Given the size, complexity and demographics of Los Angeles

County, one of the Department's top priorities was to remove barriers and obstacles that made it difficult for voters to participate in the electoral process.

68. The VSAP initiative sought to ensure that voters in Los Angeles County had greater opportunities to participate by providing expanded options for voting in a manner that is convenient, accessible and secure. The Department described key aspects of the VSAP initiative as follows:

a. Redesigned Vote-by-Mail ("VBM") Ballot: The new VBM ballot was introduced to County voters in the November 2018 General Election. The new full-face VBM ballot features larger font sizes and clearer instructions making it easy to read, complete and return. In addition, postage is prepaid, so there is no longer a need to attach a stamp. Voters who prefer to drop off their ballot in-person can do so at any VBM drop-off location or vote center throughout the County.

b. Redesigned Ballot Marking Device ("BMD"): The BMD replaces the County's legacy InkaVote system. The BMD allows every voter to customize their experience with both visual and audio access in thirteen languages and offers accessibility features that provide voters with disabilities equality and independence in casting ballots. For auditability and security, the BMDs produce human-readable paper ballots that exceed national voting system security standards.

c. New Electronic Pollbook ("e-Pollbook"): The e-Pollbook replaces the printed roster that was previously used at voting centers for voters to check-in. The e-Pollbook is connected through a secure private network to the

State of California database of eligible voters. This allows voters to check in and cast their ballot at any vote center in the County. The e-Pollbook is updated in real-time and will indicate if a voter has already cast a ballot ensuring voting integrity. In addition, the e-Pollbook enables eligible voters to register to vote at any vote center or update their registration.

d. New Interactive Sample Ballot ("ISB"): The ISB is a new convenient option to expedite the in-person voting experience. The ISB allows the voter to mark their sample ballot digitally through a web-based application accessible through the Department's website. Upon completing selections, a Quick Response Code is generated producing a Poll Pass that the voter can print or save onto a mobile device, and which the voter can then take to any vote center to be scanned on the BMD. The voter's selections will be imported onto the BMD allowing the voter to once again review their selections and make any further changes prior to casting their ballot.

e. Redesigned Modern Tally System: The Tally System is an innovative solution for paper ballot scanning and tabulation that is specifically designed to support Los Angeles County's need to process millions of ballots. It utilizes high-speed scanners to capture high-definition images of ballots and a message brokering architecture to process large volumes of digital images quickly and accurately. From paper ballot to digital image to final cast vote record, the Tally System captures data about how each ballot is read and processed, allowing for the tracking and auditing of individual ballots to verify the integrity and accuracy of election results.

f. Redesigned Vote Centers: Vote centers were located throughout the entire County. They each underwent comprehensive surveys and assessments to ensure they met Americans with Disabilities Act accessibility requirements and other qualifying criteria such as on-site parking availability, convenient access to public transit, and hours of operation.

g. New Mobile Vote Center Program: The Department also implemented a new Mobile Vote Center Program to further expand voting opportunities to the public. The program supplemented existing vote centers that might have been highly congested and provided voting services to communities that might have been geographically isolated or not appropriately served by a standard vote center. Mobile voting units were deployed on a scheduled basis across the County to provide enhanced voting services and raise voter awareness during the voting period.

69. The VSAP initiative included the first government-designed and owned voting system. The new system allowed voters to vote at any of the County's 978 centralized vote centers, a change made possible "by advanced technology like electronic poll books and ballot marking devices."

2. Los Angeles County selected Smartmatic to contribute election technology and software to the Voting Solutions for All People initiative.

70. Smartmatic was honored to be selected by the Department to assist with the VSAP initiative. In June 2018, Smartmatic entered into a contract to manufacture (hardware and software) and implement new custom-designed BMDs in collaboration with Los Angeles County as part of its VSAP initiative.

71. Smartmatic's role in the initiative was limited but important to the company as it provided an opportunity to demonstrate its technology and software in an important jurisdiction in the United States. By the end of 2019, Smartmatic had developed the BMDs and was manufacturing 31,100 units for Los Angeles County. Smartmatic also performed systems integration of the BMDs.

72. In total, Smartmatic provided the following technology and services to Los Angeles County under the VSAP initiative: (1) engineered and manufactured the BMD hardware, (2) programmed and installed the BMD software, (3) led the California certification process, (4) created the backend software to manage the devices, (5) provided systems integration services, (6) built the VSAP operations center, (7) handled logistics and setup/breakdown of the vote centers, (8) oversaw real-time data management for deployment, and (9) supplied Help Desk services on Election Day.

3. Smartmatic's involvement with Los Angeles County was a success.

73. Smartmatic's election technology and software were used in the March 3, 2020, California presidential primary in Los Angeles County. It was an undisputed success. Loyola Marymount University conducted an exit poll following the primary and concluded that most voters trusted the election and felt the technology made the voting easier. (3/11/20 Loyola Marymount University, *2020 LA Votes Presidential Primary Exit Poll* (Exhibit 118)). The key findings included:

> This year, LA County implemented new voting technology. Compared to voting in previous elections, technology made voting in this primary:
>
> - Much easier: 57.5%
> - A bit easier: 17.6%
> - The same: 13.2%

- A bit more difficult: 7.4%
- Much more difficult: 4.3%

How much do you trust that your vote will be counted as intended?

- Greatly trust: 51.7%
- Somewhat trust: 35.0%
- Somewhat distrust: 9.3%
- Greatly distrust: 4.0%

74. The California primary election was the first test for Los Angeles County's VSAP initiative, with more than 860,000 voters casting in-person ballots. Respondents overwhelmingly agreed that they had positive voting experiences, with more than 85% choosing "excellent" or "good" when asked about their overall experience.

75. The VSAP initiative was also well-received in the November general election. By the numbers:

- 791 Vote centers open on election day
- 31,000 BMDs manufactured by Smartmatic
- 19,445 BMDs deployed for the election
- 800+ Election workers hired and trained by Smartmatic
- 6,129,494 Citizens eligible to vote
- 5,785,377 Citizens registered to vote
- 73.8% Turnout of registered voters
- 4,270,129 Votes cast in the 2020 general election
- 834,150 Votes cast in-person in the 2020 general election

76. The November general election in Los Angeles County from a technology perspective was flawless. A County official described the system as a "success." There were no

serious problems during the election in Los Angeles County, and voters experienced reduced lines and reduced delays. No questions were raised about security, reliability or auditability of the results in Los Angeles County. Expectations were high, and Smartmatic exceeded those expectations.

77. Smartmatic was thrilled with its success in the Los Angeles County election. Counties and states in the United States and countries across the world pay attention to Los Angeles County when it comes to election technology and software. Smartmatic's contract with Los Angeles County was the largest in the United States. Smartmatic's successful participation in the VSAP initiative was seen as a once-in-a-lifetime opportunity for the company. It provided the company the ability to highlight its role in the largest voting jurisdiction in the United States, and highlight its success in facilitating secure, reliable, and auditable election results. This was the big success Smartmatic had been building towards for 20 years.

D. Smartmatic quietly celebrated its success in Los Angeles without knowing what was coming from Defendants.

78. What should have been a time of celebration for Smartmatic soon turned into an unexpected nightmare. There was no controversy in Los Angeles County. In the 2020 U.S. election, the Democratic candidates for President and Vice President won over 71% of the vote. In the 2016 U.S. election, the Democratic candidates for President and Vice President won over 72% of the vote. There was no material change in the voting pattern in Los Angeles County. Nor were there any allegations or suggestions that the vote in Los Angeles County had been rigged, hacked, or stolen.

79. Smartmatic did not play any role in the general election outside of Los Angeles County. Smartmatic's election technology, software, equipment, and services were not used in any other county or state for the 2020 U.S. election. Smartmatic's software was not used in any other county or state. Smartmatic did not license or contract with any third party, including other election

technology companies, for the use of Smartmatic's technology, software, machines, or services in any other county or state for the 2020 U.S. election.

80. Given that Smartmatic had no role in the general election outside of Los Angeles County, Smartmatic had no reason to be concerned about being embroiled in a discussion about election outcomes in some of the states where the vote tally was closer than it was in California. For example, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin were states where the vote tally between the Democratic and Republican nominees for President and Vice President were much closer than the margin in California. But, Smartmatic had no role whatsoever in the elections that took place in those states.

a. Nevada used election technology supplied by Dominion and Election Systems & Software ("ES&S"). (Nevada Secretary of State, *Voting System Testing and Security List* (Exhibit 74)).

b. Arizona used election technology supplied by multiple companies, including Dominion and ES&S. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 69)).

c. Georgia used election technology supplied by Dominion. (8/9/19 Georgia Secretary of State, Dominion Voting Systems Certification (Exhibit 54)).

d. Pennsylvania certified multiple election technology companies for the 2020 election, including Dominion, ES&S, Unisyn Voting Systems, ClearBallot Group, and Hart InterCivic. (Pennsylvania Department of State, *Electronic Voting Systems Certified after January 1, 2018* (Exhibit 64)).

e. Michigan used election technology supplied by Dominion, ES&S, and Hart InterCivic. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 60)).

f. Wisconsin approved multiple election technology companies for the 2020 election, including Dominion, ES&S, Sequoia Voting Systems, Premier Election Solutions, Populex, Vote-PAD, and ClearBallot Group. (Wisconsin Election Commission, *Voting Equipment List by Municipality February 2020* (Exhibit 71)).

81. Moreover, Smartmatic had no reason to get itself involved in any discussion about the election outcome outside of Los Angeles County. Apart from commenting on its role in the election in Los Angeles County, Smartmatic made no public comments about the 2020 U.S. election prior to the disinformation campaign. Smartmatic made no comments about the security, reliability, or auditability of the election technology and software used outside of Los Angeles County. Smartmatic made no public comments about election technology and software used in the 2020 U.S. election being hacked or compromised. Smartmatic made no public comments about the 2020 U.S. election being fixed, rigged, or stolen. Smartmatic had done a great job in Los Angeles County. It had no interests, and made no public comments, outside of its limited role.

II. Defendants' Disinformation Campaign Against Smartmatic

82. Joe Biden and Kamala Harris won the 2020 U.S. election for President and Vice President. The Democratic candidates secured 306 electoral votes. The Republican candidates secured 232 electoral votes. On the popular vote, the Democratic candidates received 81 million votes compared to 74 million for the Republican candidates. Among other states, the Democratic candidates won each of the states discussed above – Nevada, Arizona, Georgia, Pennsylvania,

Michigan, and Wisconsin. The victories for the Democratic candidates in those states were verified and re-verified by each of their respective Secretaries of State.[4]

83. The security, reliability, and accuracy of the 2020 U.S. election were repeatedly confirmed. Governors and Secretaries of State from across the country verified the security, reliability and accuracy of their election results. For example:

a. Nevada: Secretary of State Barbara Cegavske reported: "All voting machines undergo extensive pre-election and post-election examination to ensure they function as expected. The NV Gaming Control Board tests and certifies our systems. The post-election audits and recounts conducted in Nevada confirmed that the machines accurately tabulated the votes cast."

b. Arizona: Governor Doug Ducey stated: "We have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election."

c. Georgia: Secretary of State Brad Raffensperger reported: "Georgia's historic first statewide audit reaffirmed that the state's new secure paper ballot voting system accurately counted and reported results."

d. Pennsylvania: Governor Tom Wolf reported: "To say there was voter fraud is a lie. To say the election was unconstitutional is a lie. To say our voting systems weren't secure is a lie."

[4] Outside of the election for President and Vice President, Republican candidates won elections in Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. Those victories were verified by the respective Secretaries of State.

e. Michigan: Secretary of State Joselyn Benson reported: "We have not seen any evidence of fraud or foul play in the actual administration of the election. . . What we have seen is that it was smooth, transparent, secure and accurate."

f. Wisconsin: Elections Commission Administrator Meagan Wolfe reported: "At this time, no evidence has been provided that supports allegations of systematic or widespread election issues."

84. On November 12, 2020, members of the Election Infrastructure Government Coordinating Council ("GCC") Executive Committee and members of the Election Infrastructure Sector Coordinating Council ("SCC") published a joint statement regarding the security, reliability, and accuracy of the election results. (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 130)). The members included:

- Cybersecurity and Infrastructure Security Agency ("CISA") Assistant Director Bob Kolasky
- U.S. Election Assistance Commission Chair Benjamin Hovland
- National Association of Secretaries of State ("NASS") President Maggie Toulouse Oliver
- National Association of State Election Directors ("NASED") President Lori Augino
- Escambia County (Florida) Supervisor of Elections David Stafford
- Brian Hancock (Chair of SCC, Unisyn Voting Solutions)
- Sam Derheimer (Vice Chair of SCC, Hart InterCivic)
- Chris Wlaschin (Election Systems & Software)

- Ericka Hass (Electronic Registration Information Center)
- Maria Bianchi (Democracy Works)

85. The joint statement stated: "The November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result."

86. It continued: "When states have close elections, many will recount ballots. All of the states with close results in the 2020 presidential race have paper records of each vote, allowing the ability to go back and count each ballot if necessary. This is an added benefit for security and resilience. This process allows for the identification and correction of any mistakes or errors. **There is no evidence than any voting system deleted or lost votes, changed votes, or was in any way compromised.**" (emphasis in original)

87. And it stated: "Other security measures like pre-election testing, state certification of voting equipment and the U.S. Election Assistance Commission (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020."

88. The 2020 U.S. election for President and Vice President was not rigged. It was not compromised. It was not stolen.

A. Mr. Giuliani and Ms. Powell created a story about Smartmatic.

89. Rudolph Giuliani and Sidney Powell did not want Joe Biden and Kamala Harris to win the 2020 U.S. election. Mr. Giuliani and Ms. Powell wanted the Republican candidates (Donald Trump and Michael Pence) to prevail in the election. But, in the loss, they also saw an opportunity to profit off of President Trump's and Vice President Pence's popularity.

90. President Trump and Vice President Pence had (and continue to have) a significant and loyal following. President Trump and Vice President Pence received approximately 70 million votes during the 2020 U.S. election. President Trump had over 88 million Twitter followers. Their

popularity, particularly President Trump's popularity, was a tremendous asset. Mr. Giuliani and Ms. Powell decided to take advantage of that popularity for their own benefit.

91. Shortly after the election, Mr. Giuliani and Ms. Powell decided they would spread a story that the 2020 U.S. election had been rigged in favor of Joe Biden and Kamala Harris and stolen from Donald Trump and Michael Pence. They also decided that the story would involve manipulation of election technology in select States – ultimately, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin.

92. The problem with their story, however, was they needed to identify a villain. They knew of President Trump's popularity. They knew he had millions of loyal followers. To rile them up, to get them angry, to get them to donate money, Mr. Giuliani and Ms. Powell needed a villain in their story. They needed someone they could say had rigged and stolen the election from a President admired and adored by millions.

93. Mr. Giuliani and Ms. Powell settled on two villains: Smartmatic and Dominion. They had no evidence that Smartmatic or Dominion had done anything wrong. Indeed, in the case of Smartmatic, they had no evidence that Smartmatic's election technology and software were even used in any of the states that had close outcomes in the 2020 U.S. election. But, casting Smartmatic and Dominion as the villains made for a good story.

94. The story could also make Mr. Giuliani and Ms. Powell money. Mr. Giuliani would cast himself as President Trump's personal lawyer. He reportedly would seek thousands of dollars ($20,000/day) in fees from President Trump to spread the story and file frivolous lawsuits. He would also use the attention brought to him as one of the primary storytellers to sell various products – from coins to supplements to title fraud protection. Ms. Powell would set up websites

soliciting money from President Trump's followers to spread the story, file frivolous lawsuits, and fight imaginary enemies of democracy.

B. Fox Defendants joined the conspiracy to defame and disparage Smartmatic and its election technology and software.

95. Mr. Giuliani and Ms. Powell needed a platform to use to spread their story. They found a willing partner in Fox News. Fox News had its own problems. Fox News had tethered its financial success to President Trump and his followers. But, prior to the election, Fox News was losing ground as the news outlet of choice for President Trump and his followers. Indeed, Fox News was scorned by President Trump and his followers when it called the State of Arizona in favor of Joe Biden and Kamala Harris. Fox News needed a way to reclaim its favored status with President Trump and his followers. Enter Mr. Giuliani and Ms. Powell.

96. On November 12, 2020, Mr. Giuliani appeared on *Lou Dobbs Tonight* to spread the disinformation campaign to millions of people. (*Lou Dobbs Tonight*, November 12,2020 (Exhibit 1)).[5] At the time of his appearance, Mr. Giuliani had presented no evidence that the 2020 U.S. election had been rigged or stolen. He provided no such evidence to Mr. Dobbs and Mr. Dobbs had seen no such evidence. But, Mr. Dobbs was in alignment with the false story that Mr. Giuliani and Ms. Powell wanted to spread.

> Mr. Dobbs: Let's talk about, just for a moment, an update on Dominion and how important do you believe the concerns that are being expressed of a number of states about the ability of these machines not to be hacked?
>
> Mr. Giuliani: Well, first of all, the machines can be hacked. There's no question about that. Their machines can be hacked, but it's far worse than that. Dominion, Dominion is a company that's owned by another company Smartmatic, through its intermediary company Indra. Smartmatic is a company that was formed way back in 2004, 2003, 2004. You're gonna be astonished when I tell you how it was formed. It was formed really by three

[5] In addition to transcripts of the broadcasts, Plaintiffs will provide the Court and Defendants with videos of the broadcasts. The videos will be included on a thumbdrive. Each broadcast video on the thumbdrive will be designated as the "A" exhibit to its corresponding broadcast transcript (*e.g.* Ex. 1 & Ex. 1A).

> Venezuelans, who were very close to [] dictator, Chávez, of Venezuela. And it was formed in order to fix elections. That's the, that's the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic software. So the votes actually go to Barcelona, Spain. So we are using a foreign company that is owned by Venezuelans who are close to, were close to Chávez, are now close to Maduro, have a history, they were founded as a company to fix elections. They have a terrible record and they are extremely hackable.

97. Mr. Dobbs then took the initiative and contributed additional falsehoods to the narrative by telling people that Smartmatic and Dominion sent votes out of the country so the voting is not auditable. He had no evidence of this assertion, and Secretaries of State had stated the opposite, but that was another aspect of the false narrative that Defendants ultimately wanted to spread. Mr. Dobbs stated: "And, by the way, the states, as you well know now, they have no ability to audit meaningfully the votes that are cast because the servers are somewhere else and are considered proprietary and they won't touch them. It won't permit them being touched."

98. Mr. Dobbs then passed the microphone back to Mr. Giuliani to describe the widespread nature of the fraud perpetrated by Smartmatic.

> Mr. Giuliani: I'm working on the part of the case which is demonstrating how many illegal votes were cast. And I'm way beyond the margin that I need in Pennsylvania or Michigan to overturn the vote there. We're up to about 623 thousand unlawful ballots in Pennsylvania and about 320 unlawful ballots in Michigan. . . This was, this was a stolen election. I know, I know the phony

> elites don't want to hear it, but this was a stolen election. The same pattern exists in Nevada, Arizona, Georgia, [and] Wisconsin....
>
> Mr. Dobbs: This looks to me like it's the end of what has been a four and a half, the end game to a four and a half effort, four and a half year long effort to overthrow the President of the United States. It looks like it's exactly that, that there is a, these are all parts of a piece here.

99. Mr. Dobbs closed Fox News' first broadcast about Smartmatic with an endorsement of Mr. Giuliani's statements about the election being stolen by Smartmatic. He said: "And Rudy we're glad you're on the case and, and pursuing what is the truth and straightening out what is a very complicated and difficult story. And by the way, it's not only difficult, it has the feeling of a cover up in certain places, you know, putting the servers in foreign countries, private companies, we don't have transparency with those servers. This is, this is an election nightmare, as well as a battle."

C. Defendants engaged in a widespread disinformation campaign against Smartmatic and its election technology and software.

100. Over the next month, Defendants embarked on a disinformation campaign to convince readers and viewers that Smartmatic had rigged the 2020 U.S. election in favor of Joe Biden and Kamala Harris. The Fox Defendants spread this false story through morning and evening news programs, material posted to websites, and social media. Mr. Giuliani and Ms. Powell appeared frequently on Fox News' programs to spread and corroborate the false story.

101. On November 14, Ms. Pirro and Ms. Powell continued the conspiracy with a broadcast on *Justice with Judge Jeanine*. (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 34)). At the time of the broadcast. Ms. Pirro and Fox News knew there was no evidence supporting a claim that Smartmatic had rigged or stolen the 2020 U.S. election, much less evidence that Smartmatic played a role in any of the States with close outcomes. Nonetheless, Ms. Pirro allowed Ms. Powell to use her program to spread the disinformation campaign.

> Ms. Pirro: Welcome back. The election results in several battle ground states continue to be under intense focus as allegations of voter fraud are being investigated. Trump campaign attorney and former federal prosecutor Sidney Powell joins me now with more. All right good evening, Sidney, thank you so much for joining us. I'm – I'm sure you're very busy now. Can you give me some idea of what you're working now and what exactly you are doing on the Trump [team] in his effort to identify problems with the election?
>
> Ms. Powell: I am working on the massive aspect of system wide election fraud, definitely impacting the swing states and likely going far beyond that. We're talking about the alteration and changes in millions of votes, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the Dominion and Smartmatic software, that of course, we would not expect Dominion and Smartmatic to admit. . . [W]e are collecting evidence through a fire hose as hundreds of American patriots across the country are stepping forward with what they know about this issue. Including some, well, including some people that are taken [sic] great risk to do it.

102. Ms. Pirro and others at Fox News knew that Ms. Powell did not have any evidence to support her statement of "election fraud." She presented them with none before or after the broadcast, and she had presented none publicly. There can be no evidence of something that did not exist. But, Ms. Pirro encouraged Ms. Powell to lie about Smartmatic, which she did.

> Ms. Powell: It's either Symantec or Smartmatic or the two, there one is a subsidiary of the other. It's all inextricably intertwined. The money creating it came out of Venezuela or Cuba. It was created for the express purpose of being able to alter votes and secure the re-election of Hugo Chávez. And then Maduro. They've used it in Argentina. There was an American citizen who

> has exported it to other countries. And it is one huge criminal conspiracy that should be investigated by military intelligence for its national security implications.

103. Ms. Pirro, like Mr. Dobbs, closed by endorsing Ms. Powell's claims of a "one huge criminal conspiracy" that should be investigated: "Yes, and hopefully [by] the Department of Justice." Ms. Powell closed the show asking people to donate to her website to help fund the disinformation campaign. Not a surprise ending since making money was Ms. Powell's objective and the reason she appeared on Ms. Pirro's program.

104. On November 15, Ms. Bartiromo contributed to the disinformation campaign on *Sunday Morning Futures with Maria Bartiromo*. (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)). At the time of her program, Ms. Bartiromo had not seen any evidence indicating that the 2020 U.S. election had been stolen, much less stolen by Smartmatic. Nonetheless, Ms. Bartiromo joined the conspiracy and allowed Mr. Giuliani and Ms. Powell to spread the false story about Smartmatic.

> Ms. Bartiromo: Is the President right now in this tweet conceding this election?
>
> Mr. Giuliani: No, no, no far from it. . . As he's gotten more evidence of the rigging that went on, he's really outraged. And I am, too. I mean, it's way beyond what people think, including a very, very dangerous foreign company that did the votes in twenty-seven states. A company that's not American, a company that foreign, a company that has close, close ties with Venezuela and therefore China. And uses Venezuelan's [sic] – a company's software that's been used to steal elections in other countries. I mean, I don't think people have any idea of the dimension of the national security problem that Dominion creates. . . And the software that they use is done by a company called Smartmatic. It's a company that was founded by Chávez. And by Chávez's two – two allies, who still own it – own it. It's been used to cheat in elections in South America. It was, it was banned by the United States several [years], about a decade ago. It's come back now as a subcontractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it? Our votes are sent overseas. Sent to someplace else, some other country. . . And this company had, and this company has tried and true methods for fixing elections by calling a halt to

> the voting when you're running too far behind. They've done that in prior elections.

105. Ms. Bartiromo then introduced another aspect of the false story about Smartmatic. Ms. Bartiromo expanded on the false story by stating that Smartmatic's software has a "backdoor" that is used to determine how many votes need to be switched or altered to rig an election. It was a well-orchestrated dance between Ms. Bartiromo and Mr. Giuliani, as she set it up and he brought home a new aspect of the disinformation campaign.

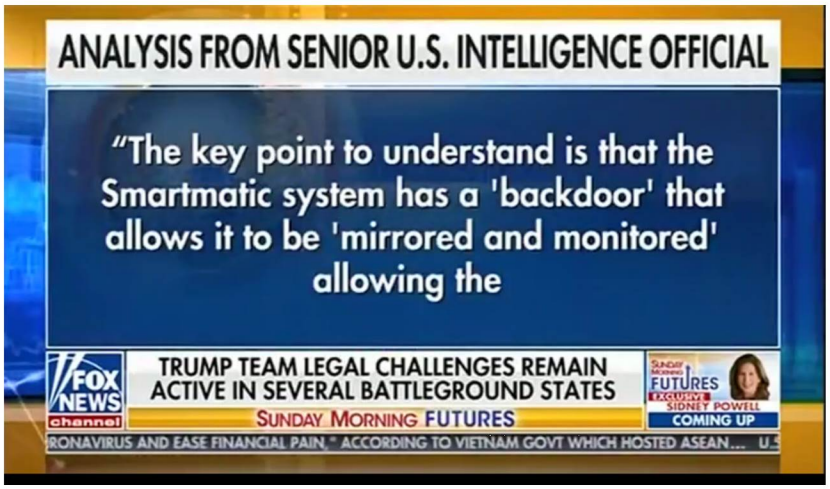
> Ms. Bartiromo: Look, I want to show this graphic of the swing states [] that were using Dominion and this, this software, this Smartmatic software. I mean, you just said it all. This is a Smartmatic, a Delaware entity registered in Boca Raton, Florida, activities in Caracas, Venezuela. The voting

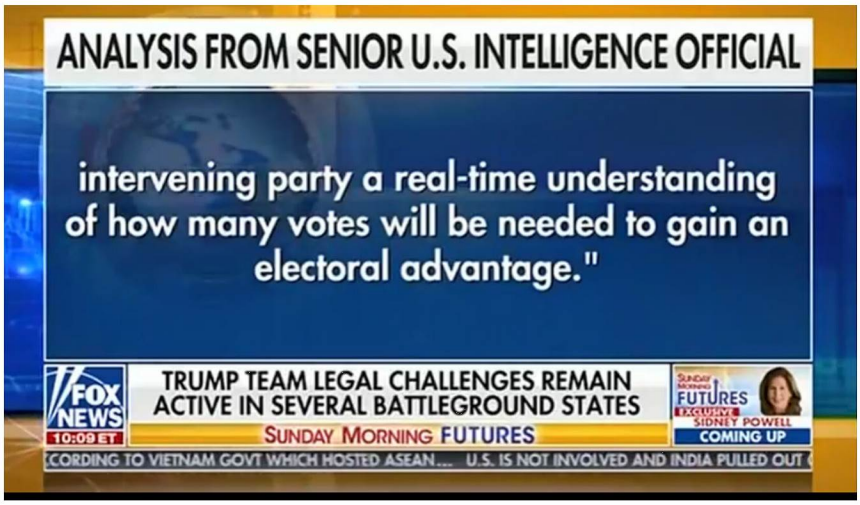
machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. And I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of election night. One source says that the key point to understand is that the Smartmatic system has a backdoor that allows it to be [] or that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of how many votes will be needed to gain an electoral advantage. Are you saying the states that used that software did that?

Mr. Giuliani: Well, I know I can prove that they did it in Michigan. I can prove it with witnesses. We're investigating the rest. And every one of those states, though, we have more than enough illegal ballots already documented to overturn the result in that state. Because not only did they use a Venezuelan company to count our ballots, which almost should be illegal per se. . . They did it in big cities where they have corrupt machines that will protect them. Meaning, in Pennsylvania, Philadelphia, in Pittsburgh, in Detroit. . . They did it absolutely in Phoenix, Arizona. They did it absolutely in Milwaukee, Wisconsin. Republicans were shut out from enough of the count so they could accomplish what Smartmatic wanted to do and what you – and that pattern that you have there, we have evidence that that's the same pattern Smartmatic used in other elections in which they were disqualified. In other words, this is their pattern of activity and yes, there is a backdoor [] and we actually have proof of some of the connections to it....

Ms. Bartiromo: So Rudy, two questions really quick before we go: do you have the Dominion hardware in your possession? Do you, do you need to have that hardware in your possession to prove it? Can you prove the case without the hardware or the software?

Mr. Giuliani: We have people that I can't really disclose that can describe the hardware in great detail. We have some of the people, former government employees; our government employees and others that were there at the creation of Smartmatic. They can describe it [], they can draw it, they can show it.



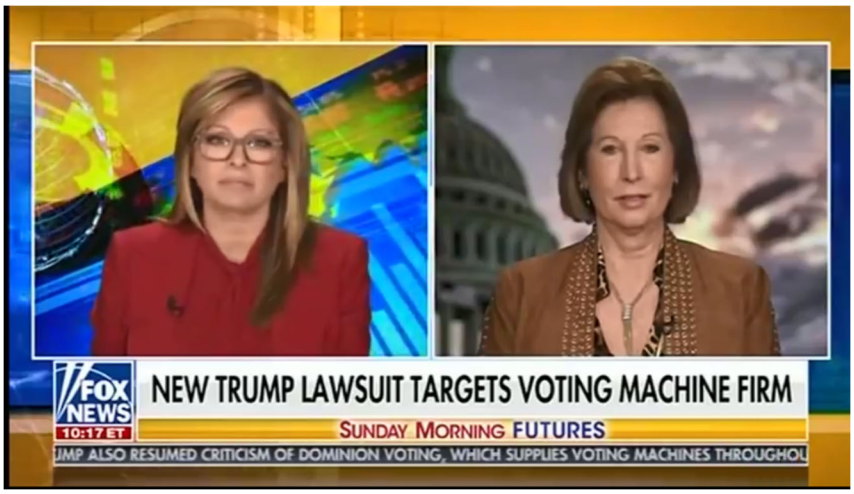


106. No one at Fox News, including Ms. Bartiromo, had seen any evidence of a "backdoor" in Smartmatic's software that was used to determine "how many votes will be needed to gain an electoral advantage." No one at Fox News, including Ms. Bartiromo, had seen any evidence that Dominion voting machines used Smartmatic's software. But, Ms. Bartiromo helped Mr. Giuliani spread the false narratives. Ms. Bartiromo closed her discussion with Mr. Giuliani by saying: "All right, Rudy. We're going to be following your investigation. Thank you very much for breaking all of this news on this program this morning."

107. Ms. Bartiromo then turned her attention to Ms. Powell, who was also on her program that morning. Ms. Bartiromo and Ms. Powell had evidently agreed, before Ms. Powell

went on-air, that they would introduce another aspect to the false narrative; specifically, they would spin a story about Smartmatic having a motivation to rig the election for Joe Biden and Kamala Harris.

> Ms. Bartiromo: Sidney, thanks very much for being here. We appreciate your time this morning. I want to get right into it. We just heard about the software made by Smartmatic from Rudy. And I want to get your take on what you – what you and I spoke about just a few minutes ago and that is a gentleman named Peter Neffenger. Tell me how he fits into all of this.
>
> Ms. Powell: Yes. Well he is listed as it's former Admiral Peter Neffenger or retired Admiral Peter Neffenger. He is President and on the board of directors of Smartmatic, and it just so happens, he's on Mr. Biden's presidential transition team that's gonna be non-existent because we're fixing to overturn the results of the election in multiple states. And President Trump won by not just hundreds of thousands of votes, but by millions of votes that were shifted by this software that was designed expressly for that purpose. We have sworn witness testimony of why the software was designed. It was designed to rig elections. . . [T]his is a massive election fraud. And I'm very concerned it involved not only Dominion and its Smartmatic software, but that the software essentially was used by other election machines also. It's the software that was the problem.



108. Ms. Bartiromo then worked with Ms. Powell to further perpetuate the new aspect of the false story that she had introduced with Mr. Giuliani – the claim that Smartmatic's software has a backdoor that is used to determine the number of votes that needed to be switched.

> Ms. Bartiromo: Now, I have spoken with a few whistleblowers myself this weekend. And one source who is an IT specialist, told me that he knew the

> software and specifically advised people in Texas, officials in Texas, not to use it. And yet, he was overruled. He said that there was an unusual patch that was put into the software while it was live, and it's highly unusual to put a patch in there. Is that what you're referring to? Tell me how it's done and how these backdoors work.
>
> Ms. Powell: Okay. That's part of it. They can stick a thumb drive in the machine or upload software to it, even from the internet. They can do it from Germany or Venezuela, even. They can remote access anything. They can watch votes in real time. They can shift votes in real time. We've identified mathematically the exact algorithms they used and plan to use from the beginning to modify the votes in this case to make sure Biden won. . . Well, it's massive election fraud.

109. Ms. Bartiromo knew there was no evidence of a backdoor used to alter votes. She had never seen any evidence of a backdoor. She also knew there was no evidence of a backdoor being operated from Germany or Venezuela. Yet, that was part of the story that Ms. Bartiromo had agreed to spread. So, instead of correcting Ms. Powell's false statements, Ms. Bartiromo ended the program with an endorsement: "Wow, this, this is explosive and we will certainly continue to follow it. Sidney, thank you so much for your work."

110. On November 16, Mr. Dobbs continued his part in spreading the disinformation campaign on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)). At the time of the broadcast, Mr. Dobbs had seen no evidence that Smartmatic's election technology and software were used to rig or steal the election. Smartmatic had only been used in Los Angeles County, making it impossible for Smartmatic to have influenced the outcome of the election. Nonetheless, he started his show by stating: "Dominion has connections to U.K based Smartmatic, a voting technology company established in 2000 that had ties to Venezuela's Hugo Chávez." And then he made sure everyone understood that Smartmatic had stolen the election.

> Mr. Dobbs: This is a nation that has just been wronged mightily. Only an idiot would try to claim that there were no irregularities, that there were no anomalies, that there were insufficient evidence and documents suggesting

> fraud and inexplicable mathematical ratios that tell us very quickly, there's something terrible afoot here.
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> Mr. Dobbs: This is the worst in our country's history. There is no election in our presidential history, our nation's history in which there were so many anomalies, so many irregularities and so much clear evidence of fraud.

111. Mr. Dobbs then introduced Ms. Powell. To lend her credibility, and lend credibility to her story about Smartmatic, Mr. Dobbs gave her the following introduction: "Joining us now by phone, Sidney Powell, a member of President Trump's legal team. She is also General Michael Flynn's attorney, former federal prosecutor, best-selling author, [and] one of the country's most prominent appellate attorneys." Ms. Powell then used Mr. Dobbs' program to introduce yet another new, fake aspect of their story about Smartmatic – a so-called witness to it all.

> Ms. Powell: I've just gotten some stunning evidence from a firsthand witness, a high ranking military officer who was present when Smartmatic was designed in a way . . that the system could change the vote of each voter without being detected. He [Hugo Chávez] wanted the software itself to function in such a manner that if the voter were to place their thumbprint or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity of having voted, but that voter would not be tracked to the changed vote. He made it clear that the system would have to be set up but not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that their name or the fingerprint or thumbprint was going with a changed vote. Smartmatic agreed to create such a system and produce the software and hardware that accomplished the result for President Chávez.

112. Mr. Dobbs did not try to stop Ms. Powell from spreading disinformation about Smartmatic. He and others at Fox News had agreed to join Ms. Powell and Mr. Giuliani to spread the disinformation. So, Mr. Dobbs closed his shows as he started it: endorsing Ms. Powell's claim that Smartmatic is to blame for "massive corruption across the country."

> Ms. Powell: Well, my other thought is that as soon as the Smartmatic system changed the votes that they wanted for their desired candidate, by the time they finished, they achieved a convincing but narrow victory of the certain number of votes they want for their candidate. This person saw [] by what is his known experience exactly what was happening there [Venezuela], was happening here.
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> Mr. Dobbs: It's a, it is a deeply, deeply troubling election. As I said earlier, the worst in this country's history bar none. And we have seen official, official investigative and Justice Department officials slow to move, and it is infuriating to everyone. . .
>
> Ms. Powell: Now we've seen willful blindness. They have adopted a position [] of willful blindness to this massive corruption across the country. And the Smartmatic software is in the DNA of every vote tabulating company's software and systems.
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> Mr. Dobbs: Yeah, Sid, it is – it is more than just willful blindness. This is people trying to blind us to what's going on. We don't even know who the hell really owns these companies, at least most of them. That's got to change and we've got to find out exactly what's going on. And thank God we've got a President who will stay in the fight all the way through until we get those answers. Sidney Powell, thanks so much. We appreciate it always.

113. On November 17, Ms. Bartiromo and Mr. Giuliani were up again on *Mornings with Maria*. (*Mornings with Maria*, November 17, 2020 (Exhibit 20)). This time Ms. Bartiromo and Mr. Giuliani told people that Smartmatic machines deprived voters of their rights and threaten to keep Republicans from ever winning the White House again.

114. Mr. Giuliani began the program by discussing the court hearing he was going to attend in Pennsylvania that day and the evidence he had gathered demonstrating that "somewhere around 700,000 ballots were counted surreptitiously." Ms. Bartiromo and Mr. Giuliani then had the following exchange:

> Ms. Bartiromo: And what are you finding so far? What do you think went on here? Because when we spoke on Sunday, we talked about the software made by Smartmatic that was changing [] votes from Trump to Biden.
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> Mr. Giuliani: People probably don't understand these ballot countings [sic] well enough to realize what a tremendous deprivation of rights this is. We have no idea if these 670,000 ballots were put in by Mickey Mouse, or Biden's cousin, or by a Democratic office holder, or by some criminal who got paid money [] to produce 10,000. There are machines that can get you signatures on a 100,000 ballots in a half-hour. And that's possibly what happened in Michigan when they brought the 100,000 ballots in the middle of the night. This is a horrendous fraud. It spans the country. It is isolated to Democrat cities. They were smart to do it in cities - it's like the old west - cities they control, where they control the workers.

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> Ms. Bartiromo: Well, I mean, who's to stop this from - from happening again? I mean, if you've got Democrats in charge from here on out, they're in charge of the machines, you'll never see a Republican in the White House again.

115. On November 18, Mr. Dobbs and Mr. Giuliani were up again on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)). Mr. Dobbs began by repeating the false claim that Ms. Powell had told two days before about a witness establishing that Smartmatic rigged the 2020 U.S. election the same way it had rigged an election in Venezuela. Mr. Dobbs did so even though he had obvious reason to doubt the veracity of the "unidentified whistleblower" – namely, the lack of any evidence or facts substantiating what the witness had to say.

> Mr. Dobbs: The American people are getting a little tired of being treated like slow witted children. It's nonsensical, it's an insult and indeed this whole fraud is an insult against this country. I want to share with the audience one of the affidavits that has been given to us by an unidentified whistleblower. And it pertains to Dominion. A whistleblower who also [] saw what happened in Venezuela. And the very similar events that took place in the United States on November 3rd. If we could put this up please to share with the audience because it is indeed alarming. . . I am alarmed because of what is occurring in plain sight during this 2020 election for President of the United States. The circumstances and events are eerily reminiscent of what happened with Smartmatic software – electronically changing votes in the 2013 presidential election in Venezuela.

116. Mr. Dobbs and Mr. Giuliani then returned to another one of their primary themes: that Smartmatic's software sends votes out of the country for manipulation to rig elections. This, of course, is not how election technology and software works; and, certainly, is not how Smartmatic's election technology and software works, but Defendants used it as part of their false narrative.

> Mr. Giuliani: Well, Lou, I don't know if people can appreciate this, but I think when they do, they're gonna be outraged. Our votes in 27, 28 states that had [been] counted by Dominion and calculated and analyzed. They're sent outside the United States. And they're not sent to Canada, they're sent to Germany and Spain. And the company counting it is not Dominion. It's Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise. How to fix elections. They did it a number of times in Venezuela. They did it in Argentina. . . Well that's the company that was counting and calculating on election night and they did all their old tricks. . . They also switched votes around subtly, maybe ten per district, so you don't notice it. . . But I mean the mere fact that we have a foreign country, we have this [done] in a foreign country done by friends of an enemy of the United States, Maduro, is outrageous and has to stop immediately.

117. At this point, Mr. Dobbs had seen no evidence of Smartmatic software being used by Dominion. He knew both companies had disclaimed any relationship. He had seen no evidence of votes being sent outside the United States by Smartmatic. And he had seen no evidence that Smartmatic rigged the 2020 U.S. election. But, instead of correcting Mr. Giuliani, Mr. Dobbs

stated: "It's outrageous, and it's all the more outrageous because Dominion and Smartmatic were denied use in the State of Texas, which called them out for what they are. They have a clear record."

118. On November 19, Mr. Dobbs continued his role in the disinformation campaign on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)). He started his program by playing portions of a press conference held by Mr. Giuliani, introducing the clips with his own statements.

> Mr. Dobbs: The President's attorney, Rudy Giuliani, leading the charge today. Giuliani says the radical Dems' control and power was consolidated in a coordinated effort to steal the election from President Trump.
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> Mr. Giuliani: And what emerged very quickly is – this is not a singular voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern. Which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities. And specifically focused on, as you would imagine, big cities controlled by Democrats, and particularly focused on big cities that have a long history of corruption.
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> Mr. Dobbs: Another issue at the center of today's new conference, the use of Dominion voting machines and Smartmatic software. Defense attorney Sidney Powell cited a whistleblower's stunning affidavit. It says Smartmatic's technology was used to rig elections in Venezuela. It is now in the quote, "DNA of every vote tabulating company software and system." Smartmatic and Dominion deny those charges. But Sidney Powell argues that algorithms in the Smartmatic software were used to change results in the presidential election.
>
> Ms. Powell: The software itself was created with so many variables and so many backdoors that can be hooked up to the Internet or a thumb drive stuck in it or whatever. But one of its most characteristic features is its ability to flip votes. It can set and run an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden, which we might never have uncovered, had the votes for President Trump not been so overwhelming in so many of these states that it broke the algorithm that had been plugged into the system. And that's what caused them to have to shut down in states they shut down in.

That when they came in the backdoor with all the mail-in ballots, many of which they had actually fabricated.

119. Mr. Dobbs then described Ms. Powell as a "great American" and "one of the country's leading appellate attorneys." Mr. Dobbs and Ms. Powell then returned to two of the themes they had decided would play a central role in the disinformation campaign: falsely claiming a relationship between Smartmatic and Dominion and falsely claiming that Smartmatic sent votes to foreign countries for manipulation during the 2020 U.S. election.

> Mr. Dobbs: Let's turn to Smartmatic and Dominion. Are they or are they not linked?

Ms. Powell: Oh, they're definitely linked. I would call them inextricably intertwined. They have the same history from inception. I'm sure they're trying to distance themselves from each other, but the fact is that the Dominion machines run the Smartmatic software and/or part of the key code of it. And that is what allows them to manipulate the votes in any way the operator choose to manipulate them.

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Mr. Dobbs: There has been great controversy as well as you know, about reports of a raid on a company Scytl in Germany, which held election data, presumably, and a raid that was carried out by U.S. forces or so goes the report, although the forces themselves were not clearly identified nor the event actually proven. Can you tell us what actually did happen there what you do know?

Ms. Powell: Well, I know that is one of the server centers. There's also one in Barcelona. So it is related to the entire Smartmatic Dominion software operation. . .

Mr. Dobbs: And it's the presumption then that they had the records on those servers of all the votes that were processed by Dominion or Smartmatic?

Ms. Powell: Yes, the way it works, the votes can be changed either on the ground as they come in. People can watch the votes streaming live. For example, there was a Dominion employee high up, high ranking at the Detroit Center the night of the election. He could have watched the votes come in live and manipulated them in that process. It could've run an automatic algorithm against all the votes, which we believe is what happened originally. And then the machines had to stop within the – or the counting had to stop in multiple places because President Trump's lead was so great at that point, they had to stop the vote counting and come in and backfill the votes they needed to change the result.

120. Mr. Dobbs again ended his discussion with Ms. Powell with an endorsement of her statements and affirmation that Smartmatic had stolen the election.

> Ms. Powell: But like I said, it's just a massive amount of information now. We've got the – well, let me put it this way, there's thousands of people in federal prison on far less evidence of criminal conduct than we have already against the Smartmatic and Dominion Systems companies. And most of the companies in the country run the same sort of software or have that code in their software. So it's farther, it's more widespread.
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> Mr. Dobbs: And incredibly, one of the benefits of this may be that we will learn who actually owns these companies. We have just watched, to everyone in this audience tonight, our election is run by companies, the ownership of which we don't know. Sidney Powell is among those trying to change all of that. Sidney Powell, thank you so much for being with us. We appreciate it.

121. On November 21, Ms. Pirro returned as a voice for the disinformation campaign on *Justice with Judge Jeanine*. (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)). Her apparent objective was to lend credibility to the statements that had previously been made by Mr. Giuliani and Ms. Powell, specifically about the "affidavits" that they had been using to prop up the fake narrative about Smartmatic. Ms. Pirro said:

> Ms. Pirro: The President's lawyers [are] alleging a company called Dominion, which they say started in Venezuela with Cuban money and with the assistance of Smartmatic software, [has] a backdoor [that] is capable of flipping votes. And the President's lawyers [are] alleging that American votes in a presidential election are actually counted in a foreign country. These are

serious allegations, but the media has no interest in any of this, but you and I do, as we should, because 73 million Americans voted for Donald Trump.

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Ms. Pirro: Now the President's lawyers offered evidence by way of affidavits, which I told you last Saturday as a judge, from a legal perspective, are sworn statements of individuals signed under penalty of perjury. Meaning they know they face the penalty of prosecution and five years [in prison] if they lie. These sworn statements are factual allegations, are part of virtually every lawsuit. It's how you start a case. The President's lawyers have indicated that they have 250 such affidavits under oath. People ready to testify, people ready to face the hate that the left has inflicted upon all of us from day one. And you know what I'm talking about.

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Ms. Pirro: Forgive me, but I believe the only important thing is making sure that the American people and Lady Justice get their way, consequences be damned. On Thursday, Rudy Giuliani made clear the Democrat cities were targeted by crooked Democrats who stole votes. These were cities where they were comfortable with corruption, where political corruption ran through the blood lines of cities like Pittsburgh and Philadelphia and Detroit. He described election night numbers going in the favor of Donald Trump, but by the next morning, absurd increases in Biden votes.

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Ms. Pirro: How do we know this? He knew it through affidavits, those sworn statements where you can actually go to jail if you don't tell the truth.

122. On November 21, Mr. Dobbs also appeared on *Watters' World*, another program broadcast by Fox News, to spread the disinformation campaign's theme that the 2020 U.S. election

had been stolen by a cyber-attack. (*Watters' World*, November 21, 2020 (Exhibit 30)). Mr. Dobbs stated:

> The President says this time they got caught in this election and indeed they have. All across the country, various jurisdictions, stealing, trying to steal an election. And this President is demonstrating, once again, he is the wrong guy to cross. The wrong guy to think you can overthrow, upend and somehow stop with a vicious campaign, whether it's verbal, whether it is physical, whether it is what we have seen here, a cyber-attack on our election, those voting machines and software. This President means to see this to the end. And that means to see it to the end of justice for these people, who have decided that they would overthrow our government and overthrow our way of life in this country. And it just damn well isn't going to succeed.

123. On November 22, Ms. Bartiromo hosted Alan Dershowitz on *Sunday Mornings with Maria Bartiromo*. (*Sunday Morning Futures with Maria Bartiromo*, November 22, 2020 (Exhibit 33)). Ms. Bartiromo started the show by reminding viewers "President Trump's legal team has just three weeks left to gather enough evidence of fraud to contest the 2020 election results in court" and Ms. Powell "says she can do [it]." Ms. Bartiromo then repeated baseless claims about Smartmatic knowing she had seen no evidence in support.

> Mr. Dershowitz: The other legal theory they [the Trump campaign] have, which is a potentially strong one, is that the computers, either fraudulently or by glitches, changed hundreds of thousands of votes. There, there are enough votes to make a difference, but I haven't seen the evidence to support that ...
>
> Ms. Bartiromo: You just mentioned the computers. This is, has to do with Smartmatic election software .... Also in terms of the computers and the software, Smartmatic election software was developed, Sidney Powell says, in Venezuela, with porous security and built-in functionality allowing the administrators to override security features. We haven't seen this, so we don't know, but this is the kind of evidence that they say they have, your reaction.

124. Ms. Bartiromo laid out a series of claims being made about Smartmatic – multiple times by the Defendants on Fox News over the last several days – and then casually acknowledged that no one at Fox has seen any evidence ("[w]e haven't seen this, so we don't know"). Mr. Dershowitz acknowledged in response: "[T]hey're going to need overwhelming evidence and I

haven't seen it." The Defendants had not seen any evidence either. That did not stop them from making the claims time and time against on Fox News.

125. On November 26, Mr. Dobbs continued the disinformation campaign against Smartmatic on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, November 26, 2020 (Exhibit 36)). Mr. Dobbs used his program to undermine the joint statement issued by the Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees, which had reported that the 2020 U.S. election was the most secure in the country's history. After mentioning the joint statement, Mr. Dobbs told his audience that the joint statement should not be trusted.

> Mr. Dobbs: Big news now: the country's largest voting machine groups have close ties to a government agency that disputes any regularities [sic] in this year's election.
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> Mr. Dobbs: Among the many things that the agency failed to disclose is that Dominion Voting Systems and another well, several voting companies are members of their election infrastructure sector coordinating council. And that's a mouthful. It's an advisory council to CISA and the DHS. One of two entities that authored, that wrote the CISA November 12 statement. Also sitting on that council, in addition to Dominion, is Smartmatic, another company that we have reported on and detailed on this broadcast with documented issues with their voting machine software ... I challenge the Department of Homeland Security to produce evidence that this was the most secure, the most secure election in history, when it was in point of fact, the opposite.

126. On December 10, Mr. Dobbs and Ms. Powell returned for another round of disinformation on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38;39)). Mr. Dobbs' introduced Ms. Powell as a "distinguished attorney, former federal prosecutor .... and as we all know, a great American." Mr. Dobbs then displayed the names of the "four individuals [who Ms. Powell says] led the effort to rig this election." Antonio Mugica, CEO of SGO

Corporation Limited, was one of the four individuals displayed by Mr. Dobbs. He then asked Ms. Powell how Mr. Mugica and the other three had rigged the election.

> Ms. Powell: Well, Lou, they designed and develop[ed] the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the votes even as it's happening. We're finding more and more evidence of this. We now have reams and reams of actual documents from Smartmatic and Dominion, including evidence that they planned and executed all of this. We know that $400 million of money came into Smartmatic from China only a few weeks before the election, that there are George Soros connections to this entire endeavor. Lord Malloch Brown [Chairman of SGO Corporation Limited] was part of it, along with the other people from Dominion. . . We know that one of the Smartmatic people has, went to Tarrant County, Texas and turned that county blue after having been an executive with Smartmatic and all of a sudden this one election Tarrant County is purportedly blue. We have evidence of how they flip the votes, how it was designed to flip the votes, and that all of it has been happening just as we have been saying it has been.
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> Ms. Powell: [W]e are still reviewing the massive amount of documents that we have, but we have communications between them and all different kinds of messages that indicate their involvement in it. It's a massive amount of additional information to go through that's only been in our hands a short time, but we will be producing more and more of it. It will be coming out more by the day. And then also the connections to the Chinese and other countries that were attacking us in this massive cyber Pearl Harbor, as we called it.
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> Ms. Powell: [W]e've known from early on in our independent investigation that the entire system was created for the benefit of Venezuela and Hugo Chávez to rig elections to make sure he continued winning. And then it was passed onto Mr. Maduro to do the same.

127. Mr. Dobbs transitioned to a break by stating: "We're going to examine in some detail the reasons for what is apparently a broadly coordinated effort to actually bring down this President by ending his second term before it could begin." On his return, Mr. Dobbs again drew focus to the screen with the names of four individuals, including Mr. Mugica. He then stated:

"Because it's important as we look at these four names, we're talking about [a] very large, a very large foreign intrusion and interference in the, in the election of 2020."

128. Mr. Dobbs then turned his attention, and Ms. Powell turned her attention, to discrediting the public statements made by agencies and officials that debunked their disinformation campaign.

> Mr. Dobbs: [I]t's outrageous that we have an Attorney General, Sidney, who said that he sees no sign of, if any, significant fraud that would overturn the election. We had a head of the Cyber Intelligence Unit for the Department of Homeland Security who is suing some people apparently for saying that his report basically was, it was nonsense when he declared it was the most secure election in the country's history. What are we dealing with here and how can we get to this if we have an Attorney General who has apparently lost both his nerve and his commitment to his oath of office and to the country. We have an FBI director who seems to be [as] politically corrupt as anyone who preceded him, and a Homeland Security Department that doesn't know what the hell it's talking about and is spending more time playing politics, at least as it applies to Mr. Krebs, than securing the nation. Your thoughts?
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> Ms. Powell: [] There's no explanation for the way the FBI has treated witnesses. I mean, good American citizens who've been brave enough to come forward with direct evidence of things like thousands of ballots moving from one state to another in the middle of the night to do what is called back-filling into the machines so that they can perpetrate their fraud because President Trump won so many votes, he blew up their algorithm. The American people blew up the algorithm they created before the election to shave votes from Biden and give them to Trump. And we're now seeing direct evidence of that happening in multiple counties, in multiple states and we know it happened across the country.

129. Mr. Dobbs' exchange with Ms. Powell also was telling for what did not take place during the program. Ms. Powell did not present evidence. Mr. Dobbs and Ms. Powell had the following exchange:

> Mr. Dobbs: Let me, let me make you an offer, very straightforwardly. We will gladly put forward your evidence that supports you claim that this was a cyber-Pearl Harbor. We have tremendous evidence already of fraud in this election. But I will be glad to put forward on this broadcast whatever evidence you have, and we'll be glad to do it immediately.
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> Ms. Powell: Awesome.

> Mr. Dobbs: We'll work overnight. We will, we will take up whatever air we're permitted beyond this broadcast. But we have to get to the bottom of this.
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> Mr. Dobbs: How much time do you need to get that evidence to this broadcast and we'll put it on the air.
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> Ms. Powell: I will get you some more information that's just stunning tonight.

130. She did not. Ms. Powell did not provide evidence to Mr. Dobbs showing that Smartmatic rigged the 2020 U.S. election for Joe Biden and Kamala Harris. Ms. Powell did not provide evidence to Mr. Dobbs showing that Smartmatic played any role in the 2020 election outside of Los Angeles County. Mr. Dobbs never returned to the airways to display the "tremendous evidence" showing Smartmatic had participated in a massive fraud. None of the Defendants had ever seen such evidence. It does not exist. Defendants story was fiction from start to finish. They knew it too.

131. Eventually, Mr. Dobbs did return to the airways with another story about Smartmatic. So did Ms. Bartiromo and Ms. Pirro. On December 18, after receiving a retraction demand letter from Smartmatic, Mr. Dobbs played a prerecorded interview with Eddie Perez, the Global Director at the Open Source Election Technology Institute. (*Lou Dobbs Tonight*, December

18, 2020 (Exhibit 45)). Ms. Bartiromo and Ms. Pirro played the prerecorded interviews on December 20. (*Sunday Morning Futures with Maria Bartiromo*, December 20, 2020 (Exhibit 46); *Justice with Judge Jeanine*, December 20, 2020 (Exhibit 47)). During the interview, Mr. Perez explained that there was no evidence in support of the claims that the Defendants had been making about Smartmatic for over a month.

D. Defendants used multiple platforms to spread disinformation

132. Defendants' disinformation campaign against Smartmatic focused on eight themes designed to reinforce each other and persuade people that Smartmatic (along with Dominion) was responsible for stealing the 2020 U.S. election from President Trump. During the Fox News programs, Defendants stated and implied:

- Smartmatic's election technology and software were widely used in the 2020 U.S. election, including in six states with close outcomes;
- Smartmatic's election technology and software were used by Dominion during the 2020 U.S. election;
- Smartmatic's election technology and software were used to steal the 2020 U.S. election by rigging and fixing the vote;
- Smartmatic's election technology and software sent votes to foreign countries for tabulation and manipulation during the 2020 U.S. election;
- Smartmatic's election technology and software were compromised and hacked during the 2020 U.S. election;
- Smartmatic was previously banned from being used in U.S. elections;
- Smartmatic is a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries; and,
- Smartmatic's election technology and software were designed to rig and fix elections.

133. Defendants used Fox News' broadcasting power from New York to disseminate the disinformation campaign to the largest audience possible. But, Fox News did not limit itself to the

evening and morning news programs. Fox News used all of its various New York-based platforms to disseminate the disinformation campaign.

a. November 12: Mr. Dobbs and Mr. Giuliani appear on *Lou Dobbs Tonight* discussing Smartmatic's role in election fraud. (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

b. November 14: Mr. Dobbs tweets: "Read all about Dominion and Smartmatic voting companies and you'll soon understand how pervasive this Democrat electoral fraud is, and why there's no way in the world the 2020 Presidential election was either free or fair. #MAGA @realDonaldTrump #AmericaFirst #Dobbs" (Twitter, @LouDobbs, November 14, 2020 (Exhibit 2)).

c. November 14: Ms. Pirro and Ms. Powell appear on *Justice with Judge Jeanine* discussing Smartmatic's role in a huge criminal conspiracy. (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

d. November 14: Fox News posts video and transcript of *Justice with Judge Jeanine* on its website discussing Smartmatic's role in a huge criminal conspiracy. (Fox News Website, November 14, 2020 (Exhibit 4)).

e. November 15: Ms. Bartiromo, Mr. Giuliani and Ms. Powell appear on *Sunday Morning Futures with Maria Bartiromo* discussing Smartmatic's role in election fraud. (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. November 15: Ms. Bartiromo and Representative Jim Jordan appear on *Sunday Morning Futures with Maria Bartiromo* discussing Smartmatic's

role in manipulating votes. (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Second Video) (Exhibit 6)).

g. November 15, Fox News posts video of *Sunday Morning Futures with Maria Bartiromo* to its website with caption: "Giuliani: Trump is contesting the election 'vigorously' in the courts." (Fox News Website, November 15, 2020, Exhibit 7)).

h. November 15: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: "Giuliani: Trump is contesting the election 'vigorously' in the courts." (Twitter, @MariaBartiromo, November 15, 2020 (First Tweet) (Exhibit 8)).

i. November 15: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: "Why doesn't Biden camp want to know truth about voting irregularities?" (Twitter, @MariaBartiromo, November 15, 2020 (Second Tweet) (Exhibit 9)).

j. November 15: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: "Attorney Powell on election legal challenge that remain active in several states." (Twitter, @MariaBartiromo, November 15, 2020 (Third Tweet) (Exhibit 10)).

k. November 15: Ms. Bartiromo tweets: "#BreakingNews the show will repeat @FoxBusiness 6pm et today" and includes tweet from BlueSkyReport that states: "Outrageous: Peter Neffenger is on the Board of Smartmatic and is on Biden's transition team. @MariaBartiromo w/@SidneyPowell1

exposing massive Foreign Election Fraud." (Twitter, @MariaBartiromo, November 15, 2020 (Fourth Tweet) (Exhibit 11)).

l. November 15: Fox News posts video and transcript of *Sunday Morning Futures with Maria Bartiromo* to its website with caption: "Why doesn't Biden camp want to know the truth about voting irregularities?" (Fox News Website, November 15, 2020 (Exhibit 12)).

m. November 16: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: Attorney for President Trump explains strategy for election lawsuits." (Twitter, @MariaBartiromo, November 16, 2020 (Exhibit 13)).

n. November 16: Mr. Dobbs and Republican National Committee Chair Ronna McDaniel appear on *Lou Dobbs Tonight* discussing Smartmatic's role in manipulating results of election. (*Lou Dobbs Tonight*, November 16, 2020 (First Video) (Exhibit 14)).

o. November 16: Mr. Dobbs and Ms. Powell appear on *Lou Dobbs Tonight* discussing Smartmatic's role in massive corruption of election. (*Lou Dobbs Tonight*, November 16, 2020 (Second Video) (Exhibit 15)).

p. November 16: Mr. Dobbs tweets: "There's never been a national election with this many widespread irregularities, anomalies, screw ups, disruption and plain cheating in American history! We must investigate and fix it all if we're to remain a constitutional Republic." and includes a tweet from Donald J. Trump. (Twitter, @LouDobbs, November 16, 2020 (Exhibit 16))

q. November 16: Fox News anchor Laura Ingram posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: "Sidney Powell says that 'the evidence on use of 'Dominion System' is coming in so fast she 'can't even process it all.'" (Twitter, @IngramAngle, November 16, 2020 (Exhibit 17)).

r. November 16: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: "Electoral Fraud: @SidneyPowell1 says she has firsthand evidence that Smartmatic voting software was designed in a way to change the vote of a voter without being detected." (Twitter, @LouDobbs, November 16, 2020 (Exhibit 18)).

s. November 16: Ms. Bartiromo post video of *Sunday Morning Futures with Maria Bartiromo* using Facebook with caption: "Attorney for President Trump explains the strategy for election lawsuits." (Facebook, Maria Bartiromo, November 16, 2020 (Exhibit 19)).

t. November 17: Ms. Bartiromo and Mr. Giuliani appear on *Mornings with Maria* discussing Smartmatic's role in horrendous fraud. (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).

u. November 17: Fox News anchor Laura Ingram retweets post by Sara A. Carter captioned: "Trump's attorneys battle for 'legitimate votes' as concern mounts over Dominion Voting Systems & Smartmatic." (Twitter, @IngramAngle, November 17, 2020 (Exhibit 21)).

v. November 17: Fox News posts video of *Mornings with Maria* to its website discussing Smartmatic's role in horrendous fraud. (Fox News Website, November 17, 2020 (Exhibit 22))

w. November 18: Mr. Dobbs and Mr. Giuliani appear on *Lou Dobbs Tonight* discussing Smartmatic's role in fixing elections. (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

x. November 18: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: "Foreign Election Involvement: @RudyGiuliani says votes in 28 states were sent to Germany and Spain to be counted by Smartmatic." (Twitter, @LouDobbs, November 18, 2020 (Exhibit 24)).

y. November 19: Mr. Dobbs and Ms. Powell appear on *Lou Dobbs Tonight* discussing Smartmatic's software being used to change election results. (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

z. November 19: Fox News posts video and transcript of *Hannity* discussing broken election system. (Fox News Website, November 19, 2020 (Exhibit 26)).

aa. November 19: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: "Inextricably Intertwined: @SidneyPowell1 has no doubt that Dominion Voting machines run Smartmatic software which allows them to manipulate the votes" #MAGA #AmericaFirst #Dobbs (Twitter, @LouDobbs, November 19, 2020) (Exhibit 27)).

bb. November 21: Ms. Pirro appears on *Justice with Judge Jeanine* discussing corruption in "Democrat strongholds" during election. (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

cc. November 21: Fox News posts video and transcript of *Justice with Judge Jeanine* to its website with caption: "Questions linger over the Left's plot against Donald Trump." (Fox News Website, November 21, 2020 (Exhibit 29)).

dd. November 21: Mr. Dobbs appears on *Watters' World* discussing a cyber-attack by voting machines and software that were used to "steal" an election. (*Watters' World*, November 21, 2020 (Exhibit 30)).

ee. November 22: Ms. Pirro posts video of *Justice with Judge Jeanine* using Twitter with caption: "PART ONE: For four years we listen to unsupported allegations of a conspiracy by a foreign government to interfere with our presidential election" #OpeningStatement" (Twitter, @JudgeJeanine, November 22, 2020 (Exhibit 31)).

ff. November 22: Fox News posts video of *Justice with Judge Jeanine* to its website with caption: "Judge Jeanine: Preserving U.S. election integrity." (Fox News Website, November 22, 2020 (Exhibit 32)).

gg. November 22: Ms. Bartiromo and Alan Dershowitz appear on *Sunday Morning Futures with Maria Bartiromo* discussing porous security of Smartmatic's software. (*Sunday Morning Futures with Maria Bartiromo*, November 22, 2020 (Exhibit 33))

hh. November 22: Fox News posts video and transcript of *Sunday Morning Futures with Maria Bartiromo* to its website with caption: "Dershowitz: 'Legal theory' supports election lawsuits but evidence is crucial." (Fox News Website, November 22, 2020 (Exhibit 34)).

ii. November 24: Ms. Pirro posts video of *Justice with Judge Jeanine* discussing corruption in "Democrat strongholds" during election using Facebook. (Facebook, Jeanine Pirro, November 24, 2020 (Exhibit 35))

jj. November 26: Mr. Dobbs appears on *Lou Dobbs Tonight* discussing issues with Smartmatic's software. (*Lou Dobbs Tonight*, November 26, 2020 (Exhibit 36)).

kk. November 26: Fox News posts video and article titled: "Attorney Sidney Powell files lawsuit seeking Georgia election results be decertified, awarded to Trump." (Fox News Website, November 26, 2020 (Exhibit 37))

ll. December 10: Mr. Dobbs and Ms. Powell appear on *Lou Dobbs Tonight* discussing Smartmatic's role in rigging the election. (*Lou Dobbs Tonight*, December 10, 2020 (First Video) (Exhibit 38) & (Second Video) (Exhibit 39)).

mm. December 10: Mr. Dobbs tweets: "The 2020 Election is a cyber Pearl Harbor: The leftwing establishment have aligned their forces to overthrow the United States government" #MAGA #AmericaFirst #Dobbs He includes a statement that reads, in part: "These four people [including Smartmatic's CEO] and their collaborators executed an electoral 9-11 against the United States with the cooperation and collusion of the media and Democrat Party

and China." (Twitter, @LouDobbs, December 10, 2020 (First Tweet) (Exhibit 40)).

nn. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: "Cyber Pearl Harbor: @SidneyPowell1 reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic and foreign adversaries." #MAGA #AmericaFirst #Dobbs (Twitter, @LouDobbs, December 10, 2020 (Second Tweet) (Exhibit 41)).

oo. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: "Evidence of Fraud: @SidneyPowell1 says the FBI and law enforcement aren't interested in electoral fraud witnesses and offers to make public evidence of a cyber-attack on the US election system." #MAGA #AmericaFirst #Dobbs (Twitter, @LouDobbs, December 10, 2020 (Third Tweet) (Exhibit 42)).

pp. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Facebook with caption: "Cyber Pearl Harbor: Sidney Powell reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries." #MAGA #AmericaFirst #Dobbs (Facebook, Lou Dobbs, December 10, 2020 (First Post) (Exhibit 43)).

qq. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Facebook with caption: "Evidence of Fraud: Sidney Powell says the FBI and law enforcement aren't interested in electoral fraud witnesses and offers to make

public evidence of a cyber-attack on the US election system." #MAGA #AmericaFirst #Dobbs (Facebook, Lou Dobbs, December 10, 2020 (Second Post) (Exhibit 44)).

134. The Fox Defendants used these platforms not only to directly disseminate the publications to the largest audience possible but also to ensure republication. *Lou Dobbs Tonight*, *Sunday Morning Futures with Maria Bartiromo, Mornings with Maria,* and *Justice with Judge Jeanine* are national broadcasts for Fox News with multi-million average viewers. On information and belief, Fox News also encouraged its affiliates to republish and repeat the claims about Smartmatic that were made during these national broadcasts.

135. Fox News also ensured the broad dissemination of the disinformation campaign by posting videos and transcripts of the broadcasts on its website. Fox News has one of the largest website viewership-base of any news organization. Posting the broadcast videos and transcripts ensured Defendants reached an even larger *global* audience with the disinformation about Smartmatic. Through its various platforms, and given its worldwide reach, Fox News ensured that that *billions* of people across the world heard, read, and saw the disinformation about Smartmatic.

136. Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro have a significant number of followers on and through Facebook and Twitter. They posted videos and made additional false statements about Smartmatic on these social media platforms to spread the disinformation campaign to yet another audience base. As Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro expected and hoped, individuals who followed them on social media "retweeted" and further republished their defamatory and disparaging statements about Smartmatic to others.

137. Finally, Mr. Dobbs used hashtags to ensure an even further dissemination of the disinformation campaign. Mr. Dobbs used the hashtags #MAGA, #AmericaFirst, and #Dobbs for

several of his social media postings. Mr. Dobbs did so to make sure that individuals following those hashtags would see and read his publication.

138. Mr. Giuliani and Ms. Powell knew of Fox News's significant broadcasting and publication reach before they appeared on *Lou Dobbs Tonight, Sunday Morning Futures with Maria Bartiromo*, *Mornings with Maria*, and *Justice with Judge Jeanine*. The audience reach of these programs was one of the reasons that Mr. Giuliani and Ms. Powell appeared on these programs. Mr. Giuliani and Ms. Powell knew their appearances on the shows would ensure that millions of individuals would hear or read their statements through the New York-based platforms.

E. Defendants presented their statements about Smartmatic as facts, not opinions

139. Defendants did not present their statements regarding Smartmatic as being opinion, rhetorical hyperbole, or speculation. They did not present their statements regarding Smartmatic as being educated guesses, possibilities, or mere allegations. Defendants presented their statements regarding Smartmatic as being fact. Fact supported by "tremendous evidence." Likewise, the Fox Defendants told their viewers and readers that their coverage of Smartmatic was one of the only ways for them to receive reliable and accurate information. The Fox Defendants told their viewers and readers to discredit and ignore whatever they heard from other sources.

140. First, Fox News promotes itself as a new organization that viewers and readers should trust for providing facts. For example:

a. On its website, Fox News advertises for "FOX Around the World" (its international programming option) by saying, "[w]e know there's no substitute for Fox News and you shouldn't be denied our Fair and Balanced coverage just because you're outside of the United States."

b. Fox News's slogan was changed in 2016-2017 to "Most watched, Most trusted."

c. On its website, Fox News notes that it is "a 24-hour-all-encompassing news service delivering breaking news as well as political and business news."

d. The Fox News website says that it has been named "the most trusted source for television news or commentary" and Fox News boasts on its website that a 2019 "Brand Keys Emotion Engagement Analysis survey found that FOX News was the most trusted cable news brand."

e. In October 2020, Fox News published a press release stating that it expanded its distribution to 27 countries worldwide ahead of the U.S. presidential election, noting that it was "enabling audiences abroad unprecedented access to FOX News Channel and FOX Business Network's world class coverage ahead of the United States election on November 3rd."

f. In its Twitter bio, Fox News states that it is "America's #1 cable news network, delivering you breaking news, insightful analysis, and must-see videos."

141. Second, the Fox Defendants promote the anchors and their programs as being reliable sources for facts. For example:

a. Fox News and Mr. Dobbs describe Mr. Dobbs as an award-winning journalist. Fox News describes *Lou Dobbs Tonight* as the "#1 news program on business television, which features a breakdown of the day's top stories and how they impact the economy."

b. Fox News and Ms. Bartiromo describe Ms. Bartiromo as a "journalist" and "news anchor" as well as the recipient of "numerous prestigious awards." Fox News describes *Sunday Morning Futures* and *Mornings with Maria* as programs that bring "big business newsmakers to the table to explore the smartest money-making opportunities for the week ahead."

c. Fox News and Ms. Pirro describe Ms. Pirro as a "highly respected District Attorney, Judge, author & renowned champion of the underdog." Fox News highlights her as having a "notable legal career" spanning "over 30 years." Fox News describes *Justice with Judge Jeanine* as a program that provides "legal insights on the news of the week."

d. None of the Fox Defendants describe Mr. Dobbs, Ms. Bartiromo, or Ms. Pirro as speculators or opinion mouthpieces. None of the Fox Defendants describe the programs they host as pure opinion programs.

142. Third, Defendants stated (falsely stated) that their statements about Smartmatic were based on evidence, investigations, and facts. Defendants intentionally created the impression that their statements about Smartmatic were predicated on reliable, verifiable facts as opposed to speculation or opinion. For example:

a. Sidney Powell: "Yes, ***we are collecting evidence*** through a fire hose as hundreds of American patriots across the country are stepping forward with what they know about this issue." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

b. Jeanine Pirro: "If you could establish that there is corruption in the use of this software, this Dominion software as you allege and you say you have

evidence, how do you put that together and prove that on election night or immediately after that at the time that the votes were being either tabulated or put in, that we can prove that they were flipped?" Sidney Powell: "There are – there is ***statistical evidence***. There's all kinds of ***mathematical evidence***, essentially ***forensic evidence***, math that cannot be disputed. We have eyewitnesses to different features of the machine. We have ***eyewitnesses*** to different aspects of the machine being uploaded with data when it was not supposed to be and never being certified." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

c. Rudy Giuliani: "In Detroit, we have ***evidence*** that a 100,000 ballots were brought in at 4:30 in the morning, and counted. And to the extent that our witnesses, and there were four of them saw it, and one of them is a ex-employee of Dominion." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Sidney Powell: "[T]he ***evidence*** is coming in so fast, I can't even process it all. Millions of Americans have written, I would say by now, definitely hundreds of thousands have stepped forward with their different experiences of voter fraud." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

e. Sidney Powell: "We've identified mathematically the ***exact algorithm*** they used and plan to use from the beginning to modify the votes in this case to make sure Biden won." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. Sidney Powell: "I've just gotten some ***stunning evidence from a firsthand witness***, a high ranking military officer who was present when Smartmatic was designed in a way that – and I'm going to just read you some of these statements if you don't mind so I get them exactly right – [] from the ***affidavit***. Designed in a way that the system could change the vote of each voter without being detected." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

g. Rudy Giuliani: "[W]e're going to argue the case in Pennsylvania today ... . And the case shows, and we're ***prepared to call witnesses*** to demonstrate, that somewhere around 700,000 ballots were counted surreptitiously." (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).

h. Rudy Giuliani: ***"I can prove what I just told you***. I can prove that there are 700,000 ballots in the state of Pennsylvania in two cities, Pittsburgh and Philadelphia, that were put in to vote and no Republican got to see it. They were deliberately excluded." (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).

i. Maria Bartiromo: "[D]o you feel you have enough evidence to overturn the results of this election?" Rudy Giuliani: I believe we have ***amassed more than enough evidence*** in Pennsylvania, Michigan, and Wisconsin, and Georgia. I believe we're very close in Nevada. Yesterday, we won a big victory in Nevada that nobody bothers to point out. The Clark County, which is Las Vegas board, which is all Democratic, reversed an election of a Democrat in favor of Republican based on the irregularities in Clark

County voting. The irregularities they're talking about are the same, were in the same election. It's the same irregularities except we have more of them. So they got it reversed on our evidence." (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).

j. Rudy Giuliani: "As we started ***investigating***, both our ***investigations*** and the very patriotic and brave American citizens that have come forward are extraordinary, extraordinary number of people, ***extraordinary number of witnesses***. And what emerged very quickly is – this is not a singular voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern. Which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

k. Lou Dobbs: "President Trump's attorneys say they can ***prove illegal ballots*** were used to inflate Biden's vote tally in Georgia and Pennsylvania, in Michigan, in Wisconsin, Nevada, and Arizona." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

l. Sidney Powell: "Well we are still in the process of ***collecting evidence***. It's coming in, in ***massive amounts***. And even today we're getting more people coming forward telling us the truth about what happened. I would think we would have fraud complaints ready sometime by late next week at the latest. But like I said, it's just a massive amount of information now. We've got the – well, let me put it this way, there's ***thousands of people in federal prisons***

on far less evidence of criminal conduct than we have already against the Smartmatic and Dominion systems companies." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

m. Jeanine Pirro: "Now the President's lawyers offered ***evidence by way of affidavits***, which I told you last Saturday as a judge, from a legal perspective, are sworn statements of individuals signed under penalty of perjury. Meaning they know they face the penalty of prosecution and five years if they lie. These sworn statements are factual allegations, are part of virtually every lawsuit. It's how you start a case. The President's lawyers have indicated that they have 250 such ***affidavits under oath***. People ready to testify, people ready to face the hate that the left has inflicted upon all of us from day one." (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

n. Sidney Powell: "Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the vote even as it's happening. We're finding ***more and more evidence*** of this. We now have ***reams and reams of actual documents*** from Smartmatic and Dominion, including evidence that they planned and executed all of this." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

o. Sidney Powell: "We have ***evidence of how they flip the votes***, how it was designed to flip the votes, and that all of it has been happening just as we

have been saying it has been." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

p. Lou Dobbs: "What is the evidence that you have compiled? How have you constructed the architecture of this relationship among these four individuals?" Sidney Powell: "Well, we are still ***reviewing the massive amount of documents*** that we have, but ***we have communications*** between them and all different kinds of messages that indicate their involvement in it. It's a ***massive amount of additional information*** to go through that it's only been in our hands a short time, but we will be producing more and more of it. It will be coming out more by the day." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

q. Sidney Powell: "Well we've known from early on in our ***independent investigation*** that the entire system was created for the benefit of Venezuela and Hugo Chávez to rig elections to make sure he continued winning." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

r. Sidney Powell: "The ***evidence is overwhelming*** and extremely troubling that this has been going on and it didn't just start this year." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

s. Sidney Powell: "I mean, good American citizens who've been brave enough to come forward with ***direct evidence*** of things like thousands of ballots moving from one state to another in the middle of the night to do what is called back-filling into the machines so that they can perpetrate their fraud because President Trump won so many votes, he blew up their algorithm.

The American people blew up the algorithm they created before the election to shave votes from Biden and give them to Trump. And we're now seeing ***direct evidence of that happening in multiple counties***, in multiple states and we know it happened across the country. You'd have to be damn fool and abjectly stupid not to see what happened here for anybody who is willing to look at the ***real evidence***. I've uploaded a ton of it on our website at defendingtherepublic.org and Twitter is even trying to destroy our new website KRAKEN-wood.com, where we're also trying to get the word out to the American people on what's been happening here and the truth, and upload documents." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).

t. Lou Dobbs: "Let me, let me make you an offer, very straightforwardly. We will gladly put forward your evidence that supports your claim that this was a cyber-Pearl Harbor. We have ***tremendous evidence already***, of fraud in this election. But I will be glad to put forward on this broadcast whatever evidence you have, and we'll be glad to do it immediately." Sidney Powell: "Awesome." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).

u. Lou Dobbs: "How much time do you need to ***get that evidence to this broadcast*** and we'll put it on the air." Sidney Powell: "I will get you some more information that's just stunning tonight." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).

143. Fourth, the Fox Defendants introduced Mr. Giuliani and Ms. Powell as lawyers. Mr. Giuliani and Ms. Powell also discuss their background and experience as lawyers. Defendants

discussed Mr. Giuliani's and Ms. Powell's background and experience as lawyers to create the impression that they were reliable sources of facts. As lawyers, Mr. Giuliani and Ms. Powell are barred by their ethical codes of conduct from lying when they are representing a client. For example:

a. Applicable to Mr. Giuliani (New York-barred): "In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person." (New York Rule of Professional Conduct 4.1).

b. Applicable to Ms. Powell (Texas-barred): "In the course of representing a client, a lawyer shall not knowingly (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client." (Texas Disciplinary Rule of Professional Conduct 4.01).

144. Fifth, Defendants intentionally created the impression that the information they provided regarding Smartmatic was the only information that was accurate and truthful. Defendants created this impression by telling readers and viewers to discount or ignore the information being provided by any source – government or media – other than the Defendants. For example:

a. Maria Bartiromo: "All right, Rudy. We're going to be following your investigation. Thank you very much for breaking all of this news on this program this morning." Rudy Giuliani: "Thank you, thank you. Please, you may -- you may be the only one following it – … . Because we're, we're

also enduring a lot of censorship. A lot, almost complete like we're not in America." Maria Bartiromo: "Unbelievable. Rudy Giuliani, we'll keep on it, I promise you. Thank you so much, Sir." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

b. Sidney Powell: "I can't tell you how livid I am with our government for not paying attention to complaints even brought by Democrats ... . And nobody in our government has paid any attention to it, which makes me wonder how much the CIA has used it for its own benefit in different place and why Gina Haspel is still there in the CIA is beyond my comprehension, she should be fired immediately." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

c. Sidney Powell: "And people have been reporting this to our government for, for several years, including Democrats and nobody has done a damn thing about it, Lou. I can't even express how furious I am over this." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

d. Sidney Powell: "Now we've seen willful blindness. They have adopted a position –" Lou Dobbs: "Yeah." Sidney Powell: " – of willful blindness to this massive corruption across the country. And the Smartmatic software is in the DNA of every vote tabulating company's software and systems." Lou Dobbs: "Yeah, Sid it is – it is more than just a willful blindness. This is people trying to blind us to what is going on. We don't even know who the hell really owns these companies, at least most of them ... ." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

e. Jeanine Pirro: "The President's lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money and with the assistance of Smartmatic software, a backdoor is capable of flipping votes. And the President's lawyers alleging that American votes in a presidential election are actually counted in a foreign country. These are serious allegations, but the media has no interest in any of this, but you and I do, as we should, because 73 million Americans voted for Donald Trump." (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

f. Lou Dobbs: "[I]t's outrageous that we have an Attorney General, Sidney, who said that he sees no sign of, if any, significant fraud that would overturn the election. We had a head of the Cyber Intelligence Unit for the Department of Homeland Security who is suing some people apparently for saying that his report basically was, it was nonsense when he declared it was the most secure election in the country's history. What are we dealing with here and how can we get to this if we have an Attorney General who has apparently lost both his nerve and his commitment to his oath of office and to the country." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).

145. Defendants' efforts to create the impression that their coverage of Smartmatic was truthful, accurate, and factual is one of the reasons that Defendants did considerable damage to Smartmatic. Defendants' statements regarding Smartmatic were unequivocal. Defendants told readers and viewers that it was a fact that Smartmatic had stolen the 2020 U.S. election and they had evidence to support that fact.

III. Defendants' False Statements and Implications About Smartmatic

146. Defendants' statements about Smartmatic were not facts. Defendants' statements about Smartmatic were lies. The demonstrably, verifiable facts are:

- Smartmatic's election technology and software were ***not*** widely used in the 2020 U.S. election. They were only used in Los Angeles County.
- Smartmatic's election technology and software were ***not*** used by Dominion during the 2020 U.S. election. The companies are competitors.
- Smartmatic's election technology and software were ***not*** used to steal the 2020 U.S. election. Nor could they have been, given that Smartmatic's role was limited to Los Angeles County.
- Smartmatic's election technology and software did ***not*** send votes to foreign countries for tabulation and manipulation during the 2020 U.S. election. The votes were tabulated in Los Angeles County.
- Smartmatic's election technology and software were ***not*** compromised and hacked during the 2020 U.S. election. No one has identified a shred of evidence that there were cyber-security issues in Los Angeles County.
- Smartmatic has ***not*** been banned from being used in U.S. elections. Other election technology companies may have been banned but not Smartmatic.
- Smartmatic is ***not*** a Venezuelan company and was ***not*** founded and funded by corrupt dictators from socialist and communist countries. Smartmatic USA Corp is based in Florida, and its parent company is based in the United Kingdom. No dictators – corrupt or otherwise, from communist/socialist countries or otherwise – were involved in founding or funding the company.
- Smartmatic's election technology and software were ***not*** designed to rig and fix elections. Smartmatic's election technology and software were designed for security, reliability, and auditability. No after-the-fact audit has ever found that Smartmatic's technology or software were used to rig, fix, or steal an election.

147. Defendants did not let these demonstrable, verifiable facts stand in their way of telling a story that would make them money.

A. Defendants falsely stated and implied that Smartmatic's election technology and software were widely used in the 2020 U.S. election

148. The first lynchpin of Defendants' disinformation campaign was to convince readers and viewers that Smartmatic's election technology and software were widely used during the 2020

U.S. election, including in the states with the closest outcomes: Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. Defendants could not persuade people that Smartmatic had stolen the election if Smartmatic's election technology and software were not widely used during the 2020 U.S. election.

149. Below are some of the statements that were made by the Defendants to create the impression that Smartmatic's election technology and software were widely used during the 2020 U.S. election:

a. Rudy Giuliani: **"**They have a terrible record, and they are extremely hackable. So Texas made the right decision. [] ***What the heck was Georgia doing hiring this company***?" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

b. Sidney Powell: "Definitely hundreds of thousands have stepped forward with their different experiences of voter fraud, but ***this is a massive election fraud***. And I'm very concerned it involved, not only ***Dominion and its Smartmatic software***, but that the ***software essentially was used by other election machines also***." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

c. Rudy Giuliani: "They did it in big cities where they have corrupt machines that will protect them, meaning in Pennsylvania, Philadelphia, and Pittsburgh, [and] in Detroit. They didn't have to do it in Chicago, in New York or Boston. They could have, they have corrupt machines there. They did it absolutely in Phoenix, Arizona. They did it absolutely in Milwaukee,

Wisconsin." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Sidney Powell: "We're talking about the alteration and changes in millions of votes, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the ***Dominion and Smartmatic software***, that of course we would not expect Dominion or Smartmatic to admit." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

e. Rudy Giuliani: "[Smartmatic] was banned by the United States several - about a decade ago. It's come back now as a sub-contractor to other companies who sorta hides in the weeds. But ***Dominion sends everything to Smartmatic***. Can you believe it? [] And this company had, and this company has tried and true methods for fixing elections by calling the halt to the voting when you're running too far behind. They've done that in prior elections." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. Maria Bartiromo: "Will you be able to prove this, Rudy? Look, I want to show this ***graphic of the swing states [] that were using Dominion and this software, this Smartmatic software***. I mean, you just said [] all this is Smartmatic, a Delaware entity registered in Boca Raton, Florida, activities in Caracas, Venezuela, the voting machines were used, Dominion voting machines were ***used in Arizona, Georgia, Michigan, Nevada,***

Pennsylvania and Wisconsin. And I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of Election Night." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

g. Rudy Giuliani: "I can prove that ***they did it in Michigan***. I can prove it with witnesses. We're investigating the rest. In every one of those states though, we have more than enough illegal ballots already documented to overturn the results in that state. Because not only did they ***use a Venezuelan company to count our ballots***, which almost should be illegal per se. [] Now, they didn't do it everywhere. They did it in big cities where they have corrupt machines that will protect them. Meaning in ***Pennsylvania, Philadelphia, and Pittsburgh, [and] in Detroit***. They didn't have to do it in Chicago, in New York or Boston. They could have, they have corrupt machines there. ***They did it absolutely in Phoenix, Arizona***. They did it absolutely in ***Milwaukee, Wisconsin***. Republicans were shut out from enough of the count, so they could accomplish what ***Smartmatic wanted to do ... ..*** We have evidence that that's the same pattern Smartmatic used in other elections in which they were disqualified." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

h. Maria Bartiromo: "Sidney, thanks very much for being here. We appreciate your time this morning. I want to get right into it. We just heard about the ***software made by Smartmatic*** from Rudy, and I want to get your take on what you – what you and I spoke about just a few minutes ago and that is a

gentleman named Peter Neffenger. Tell me how he fits into all of this." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

i. Rudy Giuliani: "Lou, I don't know if people can appreciate this but I think when they do, they're going to be outraged. Our votes in ***27 [or] 28 states*** that [are] counted by Dominion, and calculated and analyzed. They're sent outside the United States. And they're not sent to Canada. They're sent to Germany and Spain. And ***the company counting, it is not Dominion, it's Smartmatic*****,** which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

150. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

151. Individuals who heard and read Defendants' statements were led to believe that Smartmatic's election technology and software were widely used during the 2020 U.S. election, including in states with close outcomes. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

152. Defendants' statements and implication that Smartmatic's election technology and software were widely used during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were only used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election.

153. Second, Smartmatic's election technology and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic's election technology and software were not used in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin. Smartmatic's election technology and software were not used in any counties in these States.

154. Third, Smartmatic's election technology and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin (or any counties within these States).

155. Fourth, Smartmatic did not work with or assist any other voting technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting technology company, including Dominion. Smartmatic's election technology and software were not involved in collecting, tabulating, or counting any votes outside of Los Angeles County.

B. Defendants falsely stated and implied that Dominion used Smartmatic's election technology and software during the 2020 U.S. election

156. Defendants knew that Smartmatic was not used in any state or county outside of Los Angeles County. That fact is easily ascertainable from public records. Perhaps recognizing this flaw with their story, Defendants tried to hedge their bets by linking Smartmatic to Dominion. Dominion was used in multiple states during the 2020 U.S. election. Accordingly, Defendants

decided to connect Smartmatic to Dominion by claiming that one owned the other, Dominion used Smartmatic's software, and Dominion sent votes to Smartmatic for counting.

157. Below are some of the statements that were made by the Defendants to state and imply that Dominion used Smartmatic's election technology and software during the 2020 U.S. election:

a. Rudy Giuliani: "***Dominion is a company that's owned by another company called Smartmatic***, through its intermediary company named Indra." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

b. Rudy Giuliani: "I'll give you another connection. ***Smartmatic, the company that owns Dominion***. Well, the guy who was running it was one of the [] people who is number two or three in Soros's Change the World organization – Open Society, right?" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

c. Rudy Giuliani: "Smartmatic is a company that was formed way back in about 2004, 2003, 2004. You're going to be astonished when I tell you how it was formed. It was formed really by three Venezuelans who were very close to [] the dictator Chávez of Venezuela. And it was formed in order to fix elections. ***That's the [] company that owns Dominion***. Dominion is a Canadian company, but ***all of its software is Smartmatic software***. So the votes actually go to Barcelona, Spain. So we're using a foreign company that is owned by Venezuelans who are close to [] Chávez, are now close to Maduro, [they] have a history, they were founded as a company to fix elections." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

d. Sidney Powell: "We're talking about the alteration and changes in millions of votes. Some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures, all kinds of different means of manipulating the ***Dominion and Smartmatic software***, that of course we would not expect Dominion or Smartmatic to admit." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

e. Rudy Giuliani: "This Dominion company is a radical left company, one of the people there is a big supporter of Antifa and has written horrible things about the President for the last three or four years. And the ***software that they use is done by a company called Smartmatic***. It's a company that was founded by []Chávez [] and by Chávez's two allies, who still [] own it. It's been used to cheat in elections in South America ... " (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. Rudy Giuliani: "[Smartmatic] was banned by the United States several... about a decade ago. It's come back now as a sub-contractor to other companies who sorta hides in the weeds ... but ***Dominion sends everything [to] Smartmatic***. Can you believe it? [] And this company ... has tried and true methods for fixing elections by calling the halt to the voting when you're running too far behind. They've done that in prior elections." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

g. Maria Bartiromo: "[W]ill you be able to prove this, Rudy? Look, I want to show this ***graphic of the swing states that were using Dominion and this***

software, the Smartmatic software...[Y]ou just said it all. This is Smartmatic, a Delaware entity registered in Boca Raton, Florida, activities in Caracas, Venezuela. The voting machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin and I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of Election Night." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

h. Rudy Giuliani: "I can prove that they did it in Michigan. I can prove it with witnesses. We're investigating the rest. And every one of those states though, we have more than enough illegal ballots already documented to overturn the results in that state. Because not only did ***they use a Venezuelan company to count our ballots***, which almost should be illegal per se..." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

i. Maria Bartiromo: "Sidney, thanks very much for being here. We appreciate your time this morning. I want to get right into it. We just heard about the ***software made by Smartmatic*** from Rudy. And I want to get your take on what you [] and I spoke about just a few minutes ago and that is a gentleman named Peter Neffenger. Tell me how he fits into all of this." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

j. Maria Bartiromo: "What is the CIA's role? Why do you think Gina Haspel should be fired immediately? You're saying the CIA is behind the

Dominion or Smartmatic voting software as well?" Sidney Powell: "Well, the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company's products. Their own manual, if you sat down and read it, would explain how and why no honest person would use this system. And it's not just Dominion. There are other companies in the voting machine business in this country too that may very well and are likely using the same software. We've detected voting irregularities that are inexplicable and aligned with these problems in other states that think they have valid systems. But the people who bought the Dominion system for sure knew exactly what they were getting. It should never have been installed anywhere, and we are going to show the public exactly how rotten the entire state is." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

k. Sidney Powell: "[T]his is a massive election fraud. And I'm very concerned it involved not only ***Dominion and its Smartmatic software, but that the software essentially was used by other election machines also***. It's the software that was the problem. Even their own manual explains how votes can be wiped away. They can put, it's like drag-and-drop Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

l. Lou Dobbs: "***Dominion has connections to UK-based Smartmatic***, a voting technology company established in 2000 that had ties to Venezuela's Hugo Chávez." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).

m. Laura Ingraham: @IngrahamAngle "RT @SaraCarterDC #NEW Trump's attorneys battle for 'legitimate votes' as concern mounts over ***Dominion Voting Systems & Smartmatic***. Based on the affidavits given to Powell and concern over the election system's integrity there needs to be investigations" (linking article from saraacarter.com) (Twitter, @IngrahamAngle, November 17, 2020 (Exhibit 21)).

n. Rudy Giuliani: "Lou, I don't know if people can appreciate this but I think when they do they're going to be outraged. Our votes in 27 [or] 28 states that [are] counted by Dominion, and calculated and analyzed. They're sent outside the United States. And they're not sent to Canada, they're sent to Germany and Spain. And, the company counting, ***it is not Dominion. It's Smartmatic***, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise. How to fix elections ... We shouldn't be using this company that was founded by Chávez to call votes in America because their specialty in Venezuela is cheating. Well apparently the governor signed them up and never bothered to do any due diligence of any kind." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

o. Lou Dobbs: "Let's turn to Smartmatic and Dominion. Are they or are they not linked?" Sidney Powell: "***Oh they're definitely linked. I would call***

them inextricably intertwined. They have the same history from their inception. I'm sure they're trying to distance themselves from each other, but the fact is that the Dominion machines run the Smartmatic software and or parts of the key code of it." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

p. Sidney Powell: "So [Scytl] is related to ***the entire Smartmatic Dominion software operation***. We do not know whether the good guys got the servers or whether the bad guys got them ..." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

q. Lou Dobbs: "#InextricablyIntertwined: @SidneyPowell1 has no doubt ***that Dominion voting machines run Smartmatic software*** which allows them to manipulate the votes." (Twitter, @LouDobbs, November 19, 2020 (Exhibit 27)).

r. Jeanine Pirro: "The President's lawyers alleging a company called Dominion, which they say ***started in Venezuela with Cuban money and with the assistance of Smartmatic software***, a backdoor is capable of flipping votes." (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

158. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated

the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

159. Individuals who heard and read Defendants' statements were led to believe that (1) Smartmatic owned Dominion, (2) Dominion owned Smartmatic, and/or (3) Dominion used Smartmatic's election technology and software during the 2020 U.S. election. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

160. Defendants' statements and implication that (1) Smartmatic owned Dominion, (2) Dominion owned Smartmatic, and/or (3) Dominion used Smartmatic's election technology and software during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic and Dominion have no corporate relationship. Smartmatic does not own Dominion. Dominion does not own Smartmatic. Smartmatic is not a subsidiary of Dominion. Dominion is not a subsidiary of Smartmatic.

161. Second, Dominion and Smartmatic are competitors. They compete against each other. Smartmatic does not assist Dominion with its projects. Dominion does not assist Smartmatic with its projects. Neither is a sub-contractor of the either. They do not work together.

162. Third, Dominion did not use Smartmatic's election technology and software during the 2020 U.S. election. Smartmatic did not license its technology or software to Dominion for use in the 2020 U.S. election. Dominion did not purchase Smartmatic's election technology and software for use in the 2020 U.S. election.

163. Fourth, Smartmatic's election technology and software were used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election. They were not used by any other voting technology company.

164. Fifth, Smartmatic did not work with or assist any other voting technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting technology company, including Dominion. Smartmatic's election technology and software were not involved in collecting, tabulating or counting any votes outside of Los Angeles County.

C. Defendants falsely stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris.

165. Mr. Giuliani and Ms. Powell initiated a conspiracy to spread a story that the 2020 U.S. election had been fixed, rigged, and stolen from their preferred candidate. The Fox Defendants joined the conspiracy to spread that story. Given that objective, and need to identify a villain, Defendants focused their efforts during the disinformation campaign on persuading people that Smartmatic had fixed, rigged, and stolen the election for Joe Biden and Kamala Harris.

166. Below are some of the statements that were made by the Defendants to create the impression that Smartmatic had fixed, rigged, and stolen the 2020 U.S. election for Joe Biden and Kamala Harris:

a. Sidney Powell: "[W]e're fixing to overturn the results of the election in multiple States. And President Trump won by not just hundreds of thousands of votes, but by ***millions of votes that were shifted by this software that was designed expressly for that purpose***...We have so much evidence I feel like it's coming in through a firehose." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

b. Sidney Powell: "Well, let me put it this way. First of all, I never say anything I can't prove. Secondly, the evidence is coming in so fast I can't even process it all. Millions of Americans have written, I would say by now, definitely hundreds of thousands have stepped forward with their different

experiences of voter fraud. But ***this is a massive election fraud***. And I'm very concerned it involved, not only Dominion and ***its Smartmatic software***, but that the software essentially was used by other election machines also." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

c. Rudy Giuliani: "***They did it in big cities*** where they have corrupt machines that will protect them. Meaning in ***Pennsylvania, Philadelphia, in Pittsburgh, [and] in Detroit***. They didn't have to do it in Chicago, in New York or Boston. They could have, they have corrupt machines there. ***They did it absolutely in Phoenix, Arizona***. ***They did it absolutely in Milwaukee, Wisconsin***." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Rudy Giuliani: "Republicans were shut out from enough of the count so they could accomplish what Smartmatic wanted to do. . . We have evidence that that's the ***same pattern Smartmatic used in other elections*** in which they were disqualified. In other words, ***this is their pattern of activity,*** and, yes, there is a backdoor [] and we actually have proof of some of the connections to it." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

e. Rudy Giuliani: "If you get that ***Smartmatic machine*** out, and you [] allow us, I mean, this is unprecedented. They are counting mail-in ballots. And they don't allow any Republican to inspect: that is ***illegal, unlawful, against***

the law." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. Rudy Giuliani: "We have people that I can't really disclose, that can describe the hardware in great detail. We have some of the people, former government employees: our government employees and others that were there at the creation of Smartmatic. They can describe it. [] [T]hey can show it. And then we have proof that I can't disclose yet, but I'm [] confident that...[] And this has to be examined, Maria, beyond this election, which I believe will get overturned. But beyond this election, ***this whole thing has to be investigated as a national security matter***. And the Governors who gave contracts to this company never bothered to do any due diligence. I mean, I can't imagine you'd give a contract to a company if you went one step further and found out it's really being run by people that are close to Maduro and Chávez. I can't imagine you would do that unless you're out of your mind." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

g. Sidney Powell: "Yes, well he's listed as retired...Admiral Peter Neffenger. He is President of the Board of Directors of Smartmatic, and it just so happens he's on Mr. Biden's presidential transition team that's going to be non-existent because we're fixing to overturn the results of the election in multiple States. [] President Trump won by not just hundreds of thousands of votes, but by ***millions of votes that were shifted by this software that***

was designed expressly for that purpose." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

h. Sidney Powell: "First of all, I never say anything I can't prove. Secondly, the evidence is coming in so fast, I can't even process it all. Millions of Americans have written, I would say by now, definitely hundreds of thousands have stepped forward with their different experiences of voter fraud. But this is a ***massive election fraud***. And I'm very concerned it involved not only Dominion and its Smartmatic software but that the software essentially was used by other election machines also. It's the software that was the problem. Even their own manual explains how votes can be wiped away. ***They can put, it's like drag-and-drop Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system.*** In fact, every state that bought Dominion, for sure, should have a criminal investigation or at least a serious investigation of the ... officers in the States who bought the software. We've even got evidence from kickbacks, essentially." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

i. Maria Bartiromo: "What is the CIA's role? Why do you think Gina Haspel should be fired immediately? You're saying the CIA is behind the Dominion or Smartmatic voting software as well?" Sidney Powell: "Well, the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company's products.

Their own manual, if you sat down and read it, would explain how and why no honest person would use this system. And it's not just Dominion. There are other companies in the voting machine business in this country too, that may very well and are likely using the same software. ***We've detected voting irregularities that are inexplicable and aligned with these problems in other states that think they have valid systems but the people who bought the Dominion system for sure knew exactly what they were getting***. It should never have been installed anywhere and we are going to show the public exactly how rotten the entire state is." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

j. Sidney Powell: "Okay. That's part of it. They can stick a thumb drive in the machine or upload software to it, even from the Internet. They can do it from Germany or Venezuela, even. They can remote access anything. They can watch votes in real time. They can shift votes in real time. ***We've identified mathematically the exact algorithm they used and plan to use from the beginning to modify the votes in this case to make sure Biden won***. That's why he said he didn't need your votes now, he would need you later. He was right. I mean, in his demented state he had no filter and he was speaking the truth more than once, including when he said he had the largest voter fraud organization ever. ***Well, its massive election fraud. It's going to undo the entire election. And they can do anything they want with the votes***. They can have the machines not read the signature. They can have the machines not read the down ballot. They can make the machines read and catalog only the Biden votes. ***It's like drag-and-drop whatever you***

want wherever you want, upload votes. [] In fact, we've gotten math in Michigan and Pennsylvania I think it is, that all of a sudden, hundreds of thousands of votes at a 67% ratio for Biden, 23% for Trump, [] were uploaded multiple times into the system." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

k. Maria Bartiromo: "Yeah, I mean, you heard what Rudy Giuliani said earlier in the program, he and Sidney Powell are investigating the Smartmatic software and the Dominion voting machines because they do believe, and ***they say they have evidence, that there were back doors and the votes were manipulated*** to turn Trump votes into Biden votes." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Second Video) (Exhibit 6)).

l. Lou Dobbs: "Your reaction to what the Trump legal team and others are discovering about Dominion, Smartmatic and many of the other voting companies, which almost seems like probable cause for a complete and thorough investigation." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).

m. Maria Bartiromo: "What do you think went on here? Because when we spoke on Sunday we talked about the ***software made by Smartmatic that was changing [] votes from Trump to Biden***." (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).

n. Lou Dobbs: "I am alarmed because of what is occurring in plain sight during this 2020 election for President of the United States. The circumstances and

events are eerily reminiscent of what happened with ***Smartmatic software electronically changing votes*** in the 2013 presidential election in Venezuela." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

o. Rudy Giuliani: "After all the Chairman of Smartmatic is very very close to none other than Mr. Soros. So how do you think they're gonna cheat? They're gonna cheat Democratic. ***They're going to cheat left wing, they're going to cheat radical.*** That's what they are: left-wing radicals." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

p. Rudy Giuliani: "It's Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise. How to fix elections... ***Well that's the company that was counting and calculating on election night and they did all their old tricks.***" (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

q. Lou Dobbs: "Another issue at the center of today's news conference, the use of Dominion voting machines and Smartmatic software. Defense attorney Sidney Powell ... says Smartmatic's technology was used to rig elections in Venezuela. ***It is now in the quote, 'DNA of every vote tabulating company software and system.'"*** (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

r. Rudy Giuliani: "All they had time for is Biden, Biden, Biden, Biden, Biden, Biden, because ***they were being notified by Smartmatic in Frankfurt, that Biden was way behind and they better come up with a lot more ballots*** .. ." (*Hannity*, November 19, 2020 (Exhibit 26)).

s. Jeanine Pirro: "The President's lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money and ***with the assistance of Smartmatic software, a backdoor is capable of flipping votes."*** (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

t. Lou Dobbs: "The President says this time they got caught in this election and indeed they have. All across the country, various jurisdictions, stealing, trying to steal an election. And this President is demonstrating, once again, he is the wrong guy to cross. ***The wrong guy to think you can overthrow***, upend and somehow stop with a vicious campaign, whether it's verbal, whether its physical, ***whether it is what we have seen here, a cyber-attack on our election, those voting machines and software***. This President means to see this to the end. And that means to see it to the end of justice for these people, who have decided that they would overthrow our government and overthrow our way of life in this country. And it just damn well isn't going to succeed. (*Watters World*, November 21, 2020 (Exhibit 30)).

u. Lou Dobbs: "And it's the presumption then that they had the records on those servers of all the votes that were processed by Dominion or Smartmatic?" Sidney Powell: "Yes, the way it works, ***the votes can be changed either on the ground as they come in***. People can watch the votes streaming live...It could've run an automatic algorithm against all the votes, which we believe is what happened originally. And then the machines had to stop within the – or the counting had to stop in multiple places because President Trump's lead was so great at that point, they had to stop the vote

counting and come in and backfill the votes they needed to change the result." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

v. Sidney Powell: "Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the vote even as it's happening. We're finding more and more evidence of this. ***We now have reams and reams of actual documents from Smartmatic and Dominion, including evidence that they planned and executed all of this.*** We know that $400 million of money came into Smartmatic from China only a few weeks before the election and that there are George Soros connections to the entire endeavor. Lord Malloch Brown was part of it, along with the other people from Dominion, Eric Coomer... We know that one of the Smartmatic people has, went to Tarrant County, Texas and turned that county blue after having been an executive with Smartmatic and all of a sudden this one election Tarrant County is purportedly blue. ***We have evidence of how they flip the votes, how it was designed to flip the votes***. And but all of it has been happening just as we have been saying it has been." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

w. Lou Dobbs: "Cyber Pearl Harbor: @SidneyPowell1 reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries." (Twitter, @LouDobbs, December 10, 2020 (Exhibit 41)).

167. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

168. Individuals who heard and read Defendants' statements were led to believe that Smartmatic's election technology and software were used to fix, rig, and steal the 2020 U.S. election in favor of Joe Biden and Kamala Harris. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

169. Defendants' statements and implication that Smartmatic's election technology and software were used to fix, rig and steal the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were not used to fix, rig, or steal the 2020 U.S. election for Joe Biden and Kamala Harris. They were not used to fix the election. They were not used to rig the election. They were not used to steal the election. They were hardly used during the election.

170. Second, Smartmatic's election technology and software were used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or State during the 2020 U.S. election. Smartmatic's election technology and software could not have been used to fix, rig, or steal the election because they were not used anywhere during the election outside Los

Angeles County. No one has claimed that it was a surprise that Joe Biden and Kamala Harris had more votes in Los Angeles County than the Republican candidates.

171. Third, Smartmatic's election technology and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic's election technology and software were not used in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin. Smartmatic's election technology and software were not used in any counties in these states. Smartmatic's election technology and software could not have been used to fix, rig, or steal the election in these states (or counties) because they were not used in those states and counties.

172. Fourth, Smartmatic's election technology and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin (or any counties within these states). Smartmatic's election technology and software could not have been used by another company to fix, rig, or steal the 2020 U.S. election because no other company used Smartmatic's election technology and software.

173. Fifth, Smartmatic did not work with or assist any other voting technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting technology company, including Dominion. Smartmatic's election technology and software were not involved in collecting, tabulating or counting any votes outside of Los Angeles County. Smartmatic's election technology and software could not have been used to manipulate the vote in favor of one candidate over another because its election technology and software were not used outside Los Angeles County.

D. Defendants falsely stated and implied that Smartmatic sent votes to foreign countries for tabulation during the 2020 U.S. election.

174. Defendants developed an anti-foreigner theme as part of their disinformation campaign. Portraying Smartmatic as a Venezuelan company with ties to foreign dictators and funded by foreign money was one way Defendants developed the theme. The other way they did so was to scare people into thinking that Smartmatic sent votes to foreign countries for counting during the 2020 U.S. election. The impression that Defendants attempted to leave was that U.S. votes leaving U.S. soil meant they were being manipulated by foreign, anti-U.S. forces.

175. Below are some of the statements that Defendants made to create the misimpression that Smartmatic sent votes to foreign countries for tabulation during the 2020 U.S. election:

a. Lou Dobbs: "And now we have to find out whether they did. And ***with those servers whether they're in Canada, whether they're in Barcelona or Spain, or Germany***. We know a number of companies. All of them are private. Five of them, five of the top voting companies in this country - at least - if they're not in this country, they're processing our votes in this country. They comprise 90% of all of the election voting market in this country. It's stunning and they're private firms and very little is known about their ownership. Beyond what you're saying about Dominion, it's very difficult to get a handle on just who owns what and how they're being operated. And by the way, the states, as you well know now, ***they have no ability to audit meaningfully the votes that are cast because the servers are somewhere else*** and are considered proprietary and they won't touch them. It won't permit them being touched. So it's really, so how do you proceed now?" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

b. Maria Bartiromo: "Will you be able to prove this, Rudy? Look, I want to show this graphic of the swing states [] that were using Dominion and this, this software, this Smartmatic software ... [Y]ou just said it, ***all. This is Smartmatic***, a Delaware entity registered in Boca Raton, Florida, ***activities in Caracas, Venezuela***. The voting machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin and I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of Election Night." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

c. Rudy Giuliani: "[Smartmatic] was banned by the United States several, about a decade ago. It's come back now as a sub-contractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it? ***Our votes are sent overseas***. They are sent to someplace else, some other country. Why do they leave our country? [] And this company ... has tried and true methods for fixing elections by calling the halt to the voting when you're running too far behind. They've done that in prior elections." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Rudy Giuliani: "Lou, I don't know if people can appreciate this but I think when they do they're going to be outraged. [There are] votes in 27 [or] 28 states that [are] counted by Dominion, and calculated and analyzed. ***They're sent outside the United States. And they're not sent to Canada, they're***

sent to Germany and Spain. And the company counting, it is not Dominion. It's Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

e. Lou Dobbs: "Foreign Election Involvement: @RudyGiuliani says votes in 28 states were sent to Germany and Spain to be counted by Smartmatic." (Twitter, @LouDobbs, November 18, 2020 (Exhibit 24)).

176. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

177. Individuals who heard and read Defendants' statements were led to believe that Smartmatic sent votes for foreign countries for tabulation during the 2020 U.S. election and/or Smartmatic counted U.S. votes in foreign countries during the 2020 U.S. election. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

178. Defendants' statements and implication that Smartmatic sent votes for foreign countries for tabulation during the 2020 U.S. election and/or Smartmatic counted U.S. votes in foreign countries during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software did not send votes to foreign countries for

counting, tabulation or manipulation during the 2020 U.S. election. Smartmatic's election technology and software were used in Los Angeles County. Votes that were cast in Los Angeles county were counted in Los Angeles County.

179. Second, Smartmatic's election technology and software were not used by any other voting technology company during the 2020 U.S. election. Smartmatic's election technology and software were not used by another company in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin (or any counties within these States). Smartmatic's election technology and software could not have been used by another company to count votes because no other company used Smartmatic's election technology and software.

180. Third, Smartmatic did not work with or assist any other voting-technology company during the 2020 U.S. election. Smartmatic did not count the votes for any other voting-technology company, including Dominion. Smartmatic's election technology and software were not involved in collecting, tabulating or counting any votes outside of Los Angeles County. Smartmatic could not have counted votes in a foreign country for another company because Smartmatic did not count votes for another company in the 2020 U.S. election.

181. Fourth, Smartmatic did not use servers located outside the United States for the 2020 U.S. election. Smartmatic could not have used servers located outside the United States to manipulate votes because it did not use servers outside the United States. Smartmatic could not have stored votes in a foreign-based server for another company during the 2020 U.S. election because Smartmatic did not store votes for another company during the election.

E. Defendants falsely stated and implied that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election.

182. Defendants were not content to cast Smartmatic as a voluntary and willful participant in a fraud to steal the 2020 U.S. election. Defendants also told people that Smartmatic's

election technology and software were compromised or hacked during the 2020 U.S. election. Specifically, Defendants told people that Smartmatic's election technology and software has a "backdoor" and other tools that allow for easy manipulation of votes.

183. Below are some of the statements that Defendants made to create the misimpression that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election:

a. Rudy Giuliani: "[F]irst of all, ***the machines can be hacked***. There's no question about that. Their machines can be hacked, but it's far worse than that." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

b. Rudy Giuliani: "They have a terrible record and they are ***extremely hackable***. So, Texas made the right decision. What the heck was Georgia doing hiring this company?" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

c. Rudy Giuliani: "And yes, ***they can be hacked***, and yes, they can change votes." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

d. Lou Dobbs: "It is stunning, and they're private firms and very little is known about their ownership. Beyond what you're saying about Dominion, it's very difficult to get a handle on just who owns what and how they're being operated. And by the way, the states, as you well know now, ***they have no ability to audit meaningfully the votes*** that are cast because the servers are somewhere else and are considered proprietary and they won't touch them. It won't permit them being touched so it's really, so how do you proceed now?" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

e. Maria Bartiromo: "Now, I have spoken with a few whistleblowers myself, this weekend. And one source who is an IT specialist, told me that he knows the software and specifically advised people in Texas, officials in Texas, not to use it. And yet, he was overruled. He said that ***there was an unusual patch that was put into the software while it was live, and it's highly unusual to put a patch in there.***" (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. Maria Bartiromo: "One source says that the key point to understand is that the ***Smartmatic system has a back door***, that allows it to be [], or that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of how many votes will be needed to gain an electoral advantage." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

g. Rudy Giuliani: "Republicans were shut out from enough of the count, so they could accomplish what Smartmatic wanted to do...[W]e have evidence that that's the same pattern Smartmatic used in other elections in which they were disqualified. In other words, this is their pattern of activity, and, yes, ***there is a backdoor [] and we actually have proof of some of the connections to it***." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

h. Maria Bartiromo: "What is the CIA's role? Why do you think Gina Haspel should be fired immediately? You're saying the CIA is behind the Dominion or Smartmatic voting software as well?" Sidney Powell: "Well, ***the CIA and***

the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company's product." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

i. Lou Dobbs: "Smartmatic, once the subject of a Treasury Department investigation into its connections with the Venezuelan government. Three of their employees were also charged in 2016 with illegally altering code on an election server in the Philippines' national election...And in a 2015 interview on Filipino television, Malloch-Brown said part of their technology is licensed from Dominion Voting Systems. Smartmatic now says that isn't true ... A Politico article from March, in fact, documents that ***numerous security flaws were discovered in Smartmatic's software*** by California's Secretary of State and outside computer experts." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).

j. Sidney Powell: "And every time there was a glitch, as they called it, or connection to the Internet, they also violated state laws that required the machines to be certified and nothing to be changed before the votes. There are any number of legal grounds on which the use of those machines has to be stopped and the votes invalidated." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

k. Jeanine Pirro: "The President's lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money and with

the assistance of Smartmatic software, ***a backdoor is capable of flipping votes.***" (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

l. Maria Bartiromo: "This is, has to do with Smartmatic election software. They say number one, observers prevented them from seeing the ballots. Number two, there's an inconsistent laws of curing balance [sic]. Number three, the in-person voters told that they voted already, and officials told not to look for defects, and to backdate ballots before ... November third. Also, in terms of the computers and the software, ***Smartmatic election software was developed, Sidney Powell says, in Venezuela with porous security and built-in functionality allowing the administrators to override security features***." (*Mornings with Maria*, November 22, 2020 (Exhibit 33)).

m. Lou Dobbs: "Among the many things that the agency failed to disclose is that Dominion Voting Systems and another, well, several, voting companies, are members of their election infrastructure sector coordinating council. And that's a mouthful. It's an advisory council to CISA and the DHS. One of two entities that authored, that wrote the CISA November 12th statement. Also sitting on that council, in addition to Dominion, is ***Smartmatic, another company that we have reported on, and detailed, on this broadcast, with documented issues with their voting machine software***." (*Lou Dobbs Tonight*, November 26, 2020 (Exhibit 36)).

184. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were

originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

185. Individuals who heard and read Defendants' statements were led to believe that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

186. Defendants' statements and implication that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were not compromised or hacked during the 2020 U.S. election. There is no evidence of cyber-security problems in connection with the election in Los Angeles County, the only county where Smartmatic's election technology and software were used during the 2020 U.S. election.

187. Second, Smartmatic's election technology and software does not have a "backdoor" that allows votes to be changed, manipulated or altered in real-time or at all. This is true of the election technology and software that Smartmatic used during the 2020 U.S. election in Los Angeles County. It is also true of the election technology and software that Smartmatic has developed over the years.

188. Third, Smartmatic's election technology and software does not have a built-in functionality that allows for the overriding of security features. This is true of the election technology and software that Smartmatic used during the 2020 U.S. election in Los Angeles

County. It is also true of the election technology and software that Smartmatic has developed over the years.

189. Fourth, Smartmatic's election technology and software ensures auditability of election results. This is one of the primary features of Smartmatic's election technology and software. This is true of the election technology and software that Smartmatic used during the 2020 U.S. election in Los Angeles County. It is also true of the election technology and software that Smartmatic has developed over the years.

F. Defendants falsely stated and implied that Smartmatic was previously banned from providing election technology and software in the United States.

190. To cast further suspicion on Smartmatic's role in the 2020 U.S. election, Defendants told people that Smartmatic had previously been banned from providing election technology and software in the United States. This aspect of the disinformation campaign was intended to make Smartmatic's participation in the 2020 U.S. election appear more nefarious. Defendants developed the theme that the only reason that a previously banned company would be used for an election was to fix, rig, and steal the election.

191. Below are some of the statements that were made by the Defendants to create the impression that Smartmatic had previously been banned from providing election technology and software in the United States:

a. Rudy Giuliani: "Republicans were shut out from enough of the count so they could accomplish [what] Smartmatic wanted to do. . . [***W]e have evidence that that's the same pattern Smartmatic used in other elections in which they were disqualified***. In other words, this is their pattern of activity, and, yes, there is a backdoor [] and we actually have proof of some

of the connections to it." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

b. Rudy Giuliani: ***"[Smartmatic] was banned by the United States several times ... about a decade ago***. It's come back now as a sub-contractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it?" (*Sunday Morning Futures with Maria Bartiromo, Fox News*, November 15, 2020 (Exhibit 5)).

c. Maria Bartiromo: "What is the CIA's role? Why do you think Gina Haspel should be fired immediately? You're saying the CIA is behind the Dominion or Smartmatic voting software as well?" Sidney Powell: "Well, ***the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company's product.***" (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Rudy Giuliani: "[T]he company counting, it is not Dominion. It's Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise, how to fix elections. They did it a number of times in Venezuela. They did it in Argentina. They messed up an election ... in Chicago and there's a whole congressional record that you can go look at about what a terrible company this is ... [I]t's all the more outrageous because Dominion and ***Smartmatic were denied use in the state of Texas, which called them out for what they are***." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

e. Lou Dobbs: "Among the many things that the agency failed to disclose, is that Dominion Voting Systems and another, well, several, voting companies are members of their election infrastructure sector coordinating council. And that's a mouthful. It's an advisory council to CISA and the DHS. One of two entities that authored, that wrote, the CISA November 12th statement. Also sitting on that council, in addition to Dominion, is ***Smartmatic, another company that we have reported on, and detailed, on this broadcast with documented issues with their voting machine software***." (*Lou Dobbs Tonight*, November 26, 2020 (Exhibit 38)).

192. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

193. Individuals who heard and read Defendants' statements were led to believe that Smartmatic had previously been banned from providing election technology and software in the United States. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

194. Defendants' statements and implication that Smartmatic had previously been banned from providing election technology and software in the United States are demonstrably false and factually inaccurate. First, Smartmatic has never been banned from providing election technology and software in the United States. Smartmatic has never been banned by any country

from providing election technology and software. Other voting companies may have been banned or had their technology banned from being used in the United States, but not Smartmatic.

195. Second, Smartmatic has never been banned or disqualified in Texas or any other state. Smartmatic's election technology and software have never been disqualified for use by any county, state or country. Other voting companies may have been banned or disqualified in Texas or another state, but not Smartmatic.

196. Third, the CIA, FBI, and other government authorities did not receive multiple reports regarding failures and irregularities with Smartmatic's election technology and software leading up to, during, or after the 2020 U.S. election. No inquiry into Smartmatic's election technology and software has resulted in a finding of any failures or irregularities with Smartmatic's election technology and software in the United States.

197. Fourth, there are no documented issues with Smartmatic's election technology and software. There is no evidence of any issues with the Smartmatic election technology and software used by Los Angeles County during the 2020 U.S. election. Smartmatic's election technology and software were not used in any other location during the 2020 U.S. election so, necessarily, there were no documented issues with any of the Smartmatic election technology and software used in the 2020 U.S. election.

G. Defendants falsely stated and implied that Smartmatic is a Venezuelan company founded and funded by corrupt dictators from socialist and communist countries.

198. Defendants introduced xenophobia into their disinformation campaign. Defendants' story included describing Smartmatic as a Venezuelan company – a socialist and one-time communist-controlled country. It included stating that Smartmatic was founded by and for Hugo Chávez – the former socialist head of Venezuela. And it included stating that Smartmatic

received funding from socialist and communist countries like China and Cuba. Defendants intended to portray Smartmatic as being linked to socialism and communism to make its role in the 2020 U.S. election appear more nefarious.

199. Below are some of the statements that Defendants made to create the impression that Smartmatic was a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries:

a. Rudy Giuliani: "Smartmatic is a company that was formed way back in about 2004, 2003, 2004. You're gonna be astonished when I tell you how it was formed. ***It was formed really by three Venezuelans, who were very close to ... the dictator, Chávez, of Venezuela***. And it was formed in order to fix elections. That's the, that's the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic software. So the votes actually go to Barcelona, Spain. So we're using a foreign company that is ***owned by Venezuelans who are close to ... Chávez, are now close to Maduro***, have a history, they were founded as a company to fix elections." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).

b. Sidney Powell: "Lord Malloch-Brown's name has been taken off the website for the company that he runs through the U.K. and Canada - that has a role in this. It's either Symantec or Smartmatic or the two, there - one is a subsidiary of the other. It's all inexplicably intertwined. ***The money creating it came out of Venezuela and Cuba. It was created for the express purpose of being able to alter votes and secure the reelection of Hugo***

Chávez. And then Maduro." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

c. Maria Bartiromo: "Coming up: President Trump's legal team with new evidence this morning of backdoors on voting machines, ballot tampering and election interference. . . ***Plus, Sidney Powell on the Venezuela connection***. . . (*Sunday Mornings Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Rudy Giuliani: "This Dominion company is a radical left company. One of the people there is a big supporter of Antifa and has written horrible things about the President for the last three or four years. And the ***software that they use is done by a company called Smartmatic. It's a company that was founded by Chávez. And by Chávez's two - two allies who still own ... it***. And it's been used to cheat in elections in South America." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

e. Rudy Giuliani: "I can prove that they did it in Michigan. I can prove it with witnesses. We're investigating the rest. And every one of those states though, we have more than enough illegal ballots already documented to overturn the results in that state. Because not only did ***they use a Venezuelan company*** to count our ballots, ***which almost should be illegal per se*** ..." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

f. Rudy Giuliani: "And this has to be examined, Maria, beyond this election, which I believe will get overturned. But beyond this election, this whole

thing has to be investigated as a national security matter. And the governors who gave contracts to this company never bothered to do any due diligence. I mean, ***I can't imagine you'd give a contract to a company if you went one step further and found out it's really being run by people that are close to Maduro and Chávez***. I can't imagine you would do that unless you were out of your mind." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

g. Rudy Giuliani: "A company that's not American, a company that is foreign, ***a company that has close, close ties with Venezuela*** and therefore China. And ***uses Venezuelan's – a company's*** software that's been used to steal elections in other countries." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

h. Sidney Powell: "I mean that's just logic. It's been, this affidavit also explains, had been used to change election results all over the world. And ***it's all Venezuelan and Cuban and essentially communist money that's been doing this. It's a foreign-owned company*** as you mentioned earlier." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

i. Lou Dobbs: "Dominion has connections to UK-based ***Smartmatic***, a voting technology company established in 2000 that ***had ties to Venezuela's Hugo Chávez***." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).

j. Sidney Powell: "Smartmatic agreed to create such a [voting] system and produce the software and hardware that accomplished the result for President Chávez. After the Smartmatic [] electoral management system

was put in place, he closely observed several elections where the results were manipulated using the Smartmatic software. One such election was December 2006, when Chávez was running against Rosales. Chávez won in a landslide over Rosales ... . In 2013, he witnessed another Venezuelan national election where ***the Smartmatic management system was used to manipulate and change the results for Chávez.***" (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

k. Rudy Giuliani: "We shouldn't be using this ***company that was founded by Chávez*** to call votes in America because their specialty in Venezuela is cheating. Well, apparently the governor signed them up and never bothered to do any due diligence of any kind." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

l. Rudy Giuliani: "They've since taken it down. But we have it. So we've got a very radical far-left company with [] some of their high-level people supportive of Antifa. Can you believe that? And they're ***using a Venezuelan company as the vote counter,*** which is known for changing votes and also known to have [] the most insecure computers in this business. I think you'd only pick them [] because they [want to] cheat." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

m. Jeanine Pirro: "The President's lawyers alleging a company called Dominion, which they say ***started in Venezuela with Cuban money and with the assistance of Smartmatic software***, a backdoor is capable of

flipping votes." (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).

n. Maria Bartiromo: "Also in terms of the computers and ***the software, Smartmatic election software was developed, Sidney Powell says, in Venezuela, with porous security*** and built-in functionality allowing the administrators to override security features." (*Sunday Morning Futures with Maria Bartiromo*, November 22, 2020 (Exhibit 33)).

o. Sidney Powell: "Well we've known from early on in our independent investigation that ***the entire system was created for the benefit of Venezuela and Hugo Chávez*** to rig elections to make sure he continued winning. And then it was passed onto Mr. Maduro to do the same. And we know it was exported to other countries by virtue of some of the Dominion executives that proceeded to go about and essentially sell elections to the highest bidder." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

p. Sidney Powell: "We are still reviewing the massive amount of documents that we have .... It's a massive amount of additional information to go through .... And then also the connections to the Chinese and other countries that were attacking us in this massive cyber Pearl Harbor, as we called it." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

200. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished

by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

201. Individuals who heard and read Defendants' statements were led to believe that Smartmatic was a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

202. Defendants' statements and implication that Smartmatic is a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries are demonstrably false and factually inaccurate. First, Smartmatic USA Corp is an American company. Smartmatic USA Corp was founded in Florida and incorporated in Delaware in 2000.

203. Second, Smartmatic USA Corp is not owned, operated, or controlled by a Venezuelan company. Smartmatic USA Corp is a wholly-owned subsidiary of a Netherlands-based and incorporated company, which is a wholly-owned subsidiary of an United Kingdom-based and incorporated company. The Netherlands is not a socialist or communist country. The United Kingdom is not a socialist or communist country.

204. Third, Smartmatic was founded by Antonio Mugica and Roger Piñate in Florida in 2000. Smartmatic was not founded or funded by Hugo Chávez. Smartmatic was not founded or funded by the Venezuelan government.

205. Fourth, Smartmatic has not received funding from China or Cuba. Smartmatic did not receive funding from China or Cuba prior to the 2020 U.S. election. Smartmatic has not provided election technology or software in connection with any election in China or Cuba.

206. Fifth, Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology and software in Venezuela after the government announced results that differed from the actual results. Smartmatic publicly denounced the Venezuelan government in 2017.

H. Defendants falsely stated and implied that Smartmatic's election technology and software were designed to fix, rig, and steal elections.

207. Defendants were not content portraying Smartmatic as having stolen the 2020 U.S. election. Defendants decided to indict everything the company had done for the last twenty years. Defendants portrayed Smartmatic and its products as serving only one function: fixing, rigging, and stealing elections. Defendants added credibility to their story about Smartmatic stealing the 2020 U.S. election for Joe Biden and Kamala Harris by telling people that the sole purpose of Smartmatic and its products is to steal elections.

208. Below are some of the statements that Defendants made to create the impression that Smartmatic's election technology and software were designed to fix, rig, and steal elections:

a. Rudy Giuliani: "Smartmatic is a company that was formed way back in about 2004, 2003, 2004. You're gonna be astonished when I tell you how it was formed. It was formed really by three Venezuelans who were very close to ... the dictator, Chávez, of Venezuela. ***And it was formed in order to fix elections***. That's the, that's the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic software. So the votes actually go to Barcelona, Spain. So we're using a foreign company that is owned by Venezuelans who are close to [] Chávez, are now close to Maduro, [they] have a history, t***hey were founded as a company to fix elections***." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibits 1)).

b. Sidney Powell: "[W]e're fixing to overturn the results of the election in multiple states. And President Trump won by not just hundreds of thousands of votes, but by millions of ***votes that were shifted by this software that was designed expressly for that purpose*** ... We have so much evidence I feel like it's coming in through a firehose." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

c. Rudy Giuliani: "Republicans were shut out from enough of the count so they could accomplish [what] Smartmatic wanted to do ... ***we have evidence that that's the same pattern Smartmatic used in other elections in which they were disqualified***. In other words, this is their pattern of activity, and yes, there is a backdoor [] and we actually have proof of some of the connections to it." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

d. Sidney Powell: "We're talking about the ***alteration and changes in millions of votes***, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the Dominion and ***Smartmatic software***, that of course, we would not expect Dominion or ***Smartmatic*** to admit." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

e. Sidney Powell: "The money creating it came out of Venezuela and Cuba. ***It was created for the express purpose of being able to alter votes and secure the re-election of Hugo Chávez and then Maduro***. They've used it in

Argentina. There was an American citizen who has exported it to other countries. And it is one huge, ***huge criminal conspiracy*** that should be investigated by military intelligence for its national security implications." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

f. Maria Bartiromo: "Coming up: President Trump's legal team with new evidence this morning of backdoors on voting machines, ballot tampering and election interference." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

g. Rudy Giuliani: "[Smartmatic] was banned by the United States [] about a decade ago. It's come back now as a subcontractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it? Our votes are sent overseas. They are sent to someplace else, some other country. Why do they leave our country? [] And ***this company ... has tried and true methods for fixing elections by calling the halt to the voting when you're running too far behind. They've done that in prior elections***." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

h. Maria Bartiromo: "One source says that the key point to understand is that the ***Smartmatic system has a backdoor*** that allows it to be [], or that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of ***how many votes will be needed to gain an electoral advantage***." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

i. Rudy Giuliani: "Republicans were shut out from enough of the count, so they could accomplish ***what Smartmatic wanted*** to do ... [W]e have evidence that that's ***the same pattern Smartmatic used in other elections in which they were disqualified***. In other words, ***this is their pattern of activity***, and, ***yes, there is a backdoor []*** and we actually have proof of some of the connections to it." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

j. Sidney Powell: "Yes. Well he's listed as ... retired Admiral Peter Neffenger. He is President of the board of directors of Smartmatic, and it just so happens, he's on Mr. Biden's presidential transition team that's gonna be non-existent because we're fixing to overturn the results of the election in multiple states. [] President Trump won by not just hundreds of thousands of votes but by millions of votes that were ***shifted by this software that was designed expressly for that purpose***." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

k. Sidney Powell: "We have sworn witness testimony of why the software was designed. ***It was designed to rig elections.*** He was fully briefed on it. He saw it happen in other countries. It was exported internationally for profit by the ***people that are behind Smartmatic*** and Dominion. ***They did this on purpose***, it was calculated, they've done it before. We have evidence from 2016 in California. We have so much evidence, I feel like it's coming in through a firehose." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

l. Sidney Powell: "[T]his is a massive election fraud, and I'm very concerned it involved not only Dominion and its ***Smartmatic software,*** but that the software essentially was used by other election machines also. ***It's the software that was the problem. Even their own manual explains how votes can be wiped away***. They can put, it's like drag-and-drop Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

m. Maria Bartiromo: "What is the CIA's role? Why do you think Gina Haspel should be fired immediately? You're saying the CIA is behind the Dominion or ***Smartmatic voting software*** as well?" Sidney Powell: "Well, the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company's products. ***Their own manual, if you sat down and read it, would explain how and why no honest person would use this system***. And it's not just Dominion. There are other companies in the voting machine business in this country too, that may very well and are likely using the same software. We've detected voting irregularities that are inexplicable and aligned with these problems in other states that think they have valid systems. But the people who bought the Dominion system for sure knew exactly what they were getting. It should never have been installed anywhere and we are going to show the public exactly how rotten the entire state is." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

n. Sidney Powell: **"**Okay. That's part of it. They can stick a thumb drive in the machine or upload software to it, even from the Internet. They can do it from Germany or Venezuela, even. They can remote access anything. They can watch votes in real time. ***They can shift votes in real time***. ***We've identified mathematically the exact algorithm they used and planned to use from the beginning to modify the votes in this case to make sure Biden won*** ... Well, its massive election fraud. It's going to undo the entire election. And ***they can do anything they want with the votes***. They can have the machines not read the signature. They can have the machines not read the down ballot. They can make the machines read and catalog only the Biden votes. It's like drag-and-drop whatever you want, wherever you want, upload votes ... In fact, we've got math in Michigan and Pennsylvania, I think it is, that all of a sudden, hundreds of thousands of votes at a 67% ratio for Biden, 23% for Trump [], were uploaded multiple times into the system." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

o. Sidney Powell: "I've just gotten some stunning evidence from a firsthand witness, a high-ranking military officer who was present when ***Smartmatic was designed in a way that -*** and I'm going to just read you some of these statements if you don't mind, so I get them exactly right from the affidavit. ***'Designed in a way that the system could change the vote of each voter without being detected***. . . Smartmatic agreed to create such a system and produced the software and hardware that accomplished the result for

President Chávez. After the Smartmatic [] electoral management system was put in place, he closely observed several elections where the ***results were manipulated*** using the Smartmatic software ... Persons controlling the vote tabulation computer had the ***ability to change the reporting of votes by moving votes from one candidate to another by using the Smartmatic software.'"*** (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

p. Sidney Powell: "Smartmatic ***agreed to create such a [voting] system and produce the software and hardware that accomplished the result for President Chávez***. After the Smartmatic [] electoral management system was put in place, he closely observed several elections where the results were manipulated using the Smartmatic software. One such election was December 2006, when ***Chávez*** was running against Rosales. ***Chávez*** won in a landslide over Rosales ... In 2013, he witnessed another Venezuelan national election where ***the Smartmatic management system was used to manipulate and change the results for Chávez."*** (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

q. Sidney Powell: "So here's the other kicker, 'when the ***Smartmatic machines*** .... when somebody's losing, like for example when Maduro and his supporters realized the size of the other guy's lead, they were worried that they were in crisis mode and would lose the election. The Smartmatic's [sic] machines used for voting in each state were connected to the Internet, reported their information over the Internet to the Caracas control center real-time because, the ***decision was made to reset the entire system***. Maduro

and his supporters ordered the network controllers to take the Internet itself offline in practically all parts in Venezuela to change the result. It took the voting operators approximately two hours to make the adjustments in the vote from Radonski to Maduro. Then when they turned the Internet back on and the online reporting was up and running again, they checked each screen, state-by-state, to be certain they could see each ***vote was changed in favor of Maduro***.'" (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).

r. Lou Dobbs: "Dominion has connections to UK based Smartmatic, a voting technology company established in 2000 that had ties to Venezuela's Hugo Chávez." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).

s. Lou Dobbs: @LouDobbs "Electoral Fraud: @SidneyPowell1 says she has firsthand evidence that Smartmatic voting software was designed in a way to change the vote of a voter without being detected." (Twitter, @LouDobbs, November 16, 2020 (Exhibit 18)).

t. Rudy Giuliani: "Lou, I don't know if people can appreciate this but I think when they do, they're gonna be outraged. Our votes in 27 [or] 28 states that [are] counted by Dominion, and calculated and analyzed. They're sent outside the United States. And they're not sent to Canada, they're sent to Germany and Spain. And, the company counting, ***it is not Dominion. It's Smartmatic***, which is a company that was ***founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise. How to fix elections***...We shouldn't be using this company that was founded by

Chávez to call votes in America ***because their specialty in Venezuela is cheating***. Well apparently the governor signed them up and never bothered to do any due diligence of any kind." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).

u. Sidney Powell: "The software itself was created with so many variables and so many backdoors that can be hooked up to the Internet or a thumb drive stuck in it or whatever. But ***one of its most characteristic features is its ability to flip votes***. It can set and run an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden, which we might have never uncovered..." (Lou Dobbs Tonight, November 19, 2020 (Exhibit 25)).

v. Sidney Powell: "Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the vote even as it's happening." (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

209. The statements that were made during the Fox News programs were originally published during the programs and then republished when posted by one or more of the Fox Defendants to a Fox News website or social media. The statements made on social media were originally published on the social media website (*e.g.*, Twitter or Facebook) and then republished by individuals who saw the social media posts (*e.g.,* retweeting on Twitter). Defendants anticipated the republication of their statements. Defendants intended for the republication to further disseminate their statements to a larger audience.

210. Individuals who heard and read Defendants' statements were led to believe that Smartmatic's election technology and software were designed to fix, rig, and steal elections. Defendants intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

211. Defendants' statements and implication that Smartmatic's election technology and software were designed to fix, rig, and steal elections are demonstrably false and factually inaccurate. First, Smartmatic's election technology and software were not designed to fix, rig, or steal elections. Smartmatic's election technology and software were designed to ensure secure, reliable, and auditable elections.

212. Second, Smartmatic's election technology and software have not been used to fix, rig, or steal elections. Smartmatic's election technology and software have been used in thousands of elections over the last twenty years. Smartmatic's election technology and software has not been used to fix, rig, or steal any of those elections.

213. Third, Smartmatic's election technology and software have not been used to change votes from one candidate to another in any election. Smartmatic's election technology and software ensures auditable elections. No audit of an election in which Smartmatic participated has identified any instances of Smartmatic's election technology and software changing votes from one candidate to another.

214. Fourth, Smartmatic's election technology and software have not been used to delete or eliminate votes for a particular candidate. Nor do any manuals used with Smartmatic's election technology and software include instructions on how votes for a particular candidate can be deleted or eliminated by clicking and dragging, by creating folders, or otherwise. Smartmatic's election

technology and software creates audit trails. Audit trails are inconsistent with the notion of deleting and eliminating votes.

215. Fifth, Smartmatic's election technology and software did not fix, rig, or steal elections in Venezuela. Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology and software in Venezuela after the Venezuelan government announced results that differed from the actual results. Smartmatic publicly denounced the government in 2017.

216. Sixth, Hugo Chávez had no role in the development or design of Smartmatic's election technology and software. Nor was Smartmatic's election technology and software developed in coordination with Mr. Chávez. Smartmatic's election technology and software were developed to ensure secure, reliable, and auditable elections.

IV. Defendants Acted with Actual Malice and Ill Will Towards Smartmatic[6]

217. Each of the Defendants knew that the statements and implications that they made about Smartmatic were false and/or they acted with reckless disregard for whether their statements and implications were true. Defendants did not care about making truthful statements about Smartmatic. Defendants were motivated to tell a story about how Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris.

218. Defendants' actual malice with respect to their statements and implications about Smartmatic is illustrated by the following facts:

- Defendants had no basis for their statements about Smartmatic's role in the 2020 U.S. election. They simply made up a story.

[6] Smartmatic's discussion of Defendants' actual malice is not an admission that Smartmatic must allege and prove Defendants acted with actual malice to establish liability. Smartmatic's position is that it does not need to prove actual malice to establish liability.

- Defendants had obvious reasons to doubt what they were saying about Smartmatic outside of the 2020 U.S. election because most of it was made up too.

- The Fox Defendants had obvious reasons to doubt Mr. Giuliani and Ms. Powell's veracity because they understood that Mr. Giuliani and Ms. Powell were making it up. Beyond that, Mr. Giuliani and Ms. Powell never provided the "evidence" they claimed to have about Smartmatic, which confirmed none existed.

- Mr. Giuliani and Ms. Powell had obvious reasons to doubt the veracity of their so-called "sources" because they knew the story about Smartmatic was made up. Even the "sources" Mr. Giuliani and Ms. Powell tried to use to support their story lacked firsthand knowledge of Smartmatic.

- Defendants possessed or had access to a significant volume of information that contradicted the story they told about Smartmatic. Defendants either reviewed this information (and therefore knew their statements and implications were false) or purposefully avoided reviewing this information because they did not want to know the truth.

219. Defendants also acted with ill will towards Smartmatic. Defendants could not sell their story without a villain, and they picked Smartmatic to play that villain knowing full well the damage it would cause the company. Defendants did not mind destroying a company because it served their personal and financial interests. For Defendants, this was not about changing the outcome of an election. They knew that was not possible. This was about currying favor with the outgoing administration, endearing themselves to the millions of Americans who supported President Trump, and making money.

A. Defendants had no support for their statements and implications regarding Smartmatic.

220. Defendants invented a story about Smartmatic and its election technology and software. They invented the story to fit a preconceived narrative – that the 2020 U.S. election had been fixed, rigged, and stolen. They did not have a basis for naming Smartmatic the villain in this story.

1. Defendants did not have sources to prove something that did not happen.

221. There is one irrefutable fact that undermines nearly everything that Defendants said about Smartmatic during their disinformation campaign: Smartmatic's only role in the 2020 U.S. election was as a provider of election technology and software to Los Angeles County. This fact was known to Defendants or readily ascertainable, and it puts the lie to nearly everything they said.

222. Defendants stated and implied that Smartmatic's election technology and software were widely used in the 2020 U.S. election, including in states with close outcomes. Defendants did not have any source for this statement and implication because Smartmatic's election technology and software were only used in Los Angeles County.

223. Defendants stated and implied that Dominion used Smartmatic's election technology and software during the 2020 U.S. election. Defendants did not have any source for this statement and implication because Dominion did not use Smartmatic's election technology and software during the 2020 U.S. election.

224. Defendants stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris. Defendants did not have any source for this statement and implication because Smartmatic's election technology and software were not used in any of the states with close outcomes.

225. Defendants stated and implied that Smartmatic sent and/or processed votes for the 2020 U.S. election in foreign countries. Defendants did not have any source for this statement and implication because the votes in Los Angeles County were counted and tabulated in Los Angeles County.

226. Defendants stated and implied that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election. Defendants did not have any source

for this statement and implication because no one has raised cyber-security concerns with the election in Los Angeles County.

227. Defendants' disinformation campaign was not limited to distorting Smartmatic's role in the 2020 U.S. election. Defendants also defamed and disparaged Smartmatic by lying about the company's past. Defendants had no basis, or no credible basis, for these statements and implications either.

228. Defendants stated and implied that Smartmatic's election technology and software had been banned from use in the United States. Defendants did not have any source for this statement and implication because Smartmatic's election technology and software have never been banned in the United States.

229. Defendants stated and implied that Smartmatic is a Venezuelan company founded and funded by corrupt dictators from socialist and communist countries. Defendants did not have any source identifying Smartmatic as a Venezuelan company because it is not. Defendants did not have any source with firsthand knowledge supporting claims about the company being founded and funded by corrupt dictators because that did not happen.

230. Defendants stated and implied that Smartmatic's election technology and software were designed to fix, rig, and steal elections. Defendants did not have any source with firsthand knowledge supporting this statement and implication because it never happened.

2. Fox Defendants eventually admitted they had no basis for their statements and implications about Smartmatic.

231. The Fox Defendants, for their part, have acknowledged – partially and begrudgingly – that they had no basis for the statements and implications they published about Smartmatic. On December 10, Smartmatic sent a retraction demand letter to Fox News Network, LLC. (12/10/20 Retraction Demand Letter to Fox News (Exhibit 77)). The 20-page retraction

demand letter identified many of the false and misleading statements published by Fox, explained the reasons the statements were false and misleading, and requested a full and complete retraction.

232. Fox did not issue a retraction. Instead, on December 18, Mr. Dobbs appeared on *Lou Dobbs Tonight* and introduced a "leading authority" who confirmed that there was no evidence to support the claims that the Defendants, including Mr. Dobbs, had been making about Smartmatic for the last month. (*Lou Dobbs Tonight*, December 18, 2020 (Exhibit 45)). Mr. Dobbs introduced the segment:

> There are a lot of opinions about the integrity of the election, the irregularities of mail-in voting, of election voting machines and voting software. One of the companies is Smartmatic, and we reached out to one of the leading authorities on open source software for elections, Eddie Perez, for his insight and views. Eddie is the global director of tech development at the Open-Source Election Technology Institute. We ask him for his assessment of Smartmatic and recent claims about the company.

233. Mr. Dobbs did not acknowledge, in his introduction, that he was one of the primary voices making claims about Smartmatic. Nor did Mr. Dobbs acknowledge that he and others on his program, including Mr. Giuliani and Ms. Powell, did not frame their statements about Smartmatic as opinions. Rather, they framed their statements about Smartmatic as being facts based on "tremendous evidence."

234. Regardless, after Mr. Dobbs's introduction, the program switched to a pre-recorded video of Mr. Perez being asked a series of questions by an unidentified voice. Mr. Perez confirmed that no evidence existed for the story the Defendants had been publishing about Smartmatic:

a. Speaker: "Have you seen any evidence that Smartmatic software was used to flip votes anywhere in the U.S. in this election?" Eddie Perez: "I have not seen any evidence that Smartmatic software was used to delete, change, alter - anything related to vote tabulation."

b. Speaker: "Smartmatic says its software was never used outside of L.A. County in 2020. Do you know whether or not that's true?" Eddie Perez: "That is my understanding. Smartmatic functioned as the contract manufacturer for the Los Angeles County voting system, and that was a customized system that was effectively built to the county's order. I am not aware of them having any other direct customers [or] relationships with election officials in the United States."

c. Speaker: "What about Smartmatic and Dominion, do you know if they're related, whether one owns the other, whether Dominion uses Smartmatic software?" Eddie Perez: "Both Dominion and Smartmatic have individually and respectively put out very clear statements from their corporate headquarters, each of them indicating they are independent companies, they are not related to each other. It is my understanding that neither one of them has an ownership stake in the other or anything like that. They are, again, for all intents and purposes, two completely separate companies."

d. Speaker: "Have you seen any evidence of a connection between George Soros and Smartmatic?" Eddie Perez: "I'm not aware of any direct connection between George Soros and Smartmatic. It is my understanding that an executive at Smartmatic has some sort of relationship with one of Soros's foundations. That's the extent of my knowledge."

e. Speaker: "Have you seen any evidence of Smartmatic sending U.S. votes to be tabulated in foreign countries?" Eddie Perez: "No, I'm not aware of any evidence that Smartmatic is sending U.S. votes to be tabulated in foreign

countries. Again, I'm not aware, outside of Los Angeles County, of Smartmatic tabulating any votes in the United States because I'm not aware of them having any customer relationships in the U.S. And secondly, as others have pointed out, irrespective of which voting technology vendor we're talking about, in the United States, the ballots that are cast in the United States are tabulated in the United States."

f. Speaker: "Are you aware of any instances in which Smartmatic's technology was banned in the U.S. in 2020 due to security weaknesses or wrongdoing?" Eddie Perez: "I am not. I'm not aware of any instances where Smartmatic's technology was banned in the U.S. Again, it is my understanding that outside of one customer in Los Angeles County, Smartmatic has no presence in the voting technology marketplace in the United States."

235. On December 20, it was Ms. Pirro's turn to air an acknowledgement on her program that Fox News did not have a basis for the statements and implications that had been made about Smartmatic. (*Justice with Judge Jeanine*, December 20, 2020 (Exhibit 47)). But Ms. Pirro did not record an introduction for Mr. Perez. Instead, Lisa Boothe was tasked with doing the introduction for *Justice with Judge Jeanine* for that program:

> Welcome back to Justice. In our weekslong look into election integrity, we've heard concerns about both voting machines and voting software, specifically a company called Smartmatic. This week we reached out to Eddie Perez for his insight. He is the Global Director of tech development at the Open Source Election Technology Institute. His team develops Open Source Software for elections, and we asked him what he knew about Smartmatic and the claims some have made about that company.

236. Ms. Boothe did not acknowledge, for the absent Ms. Pirro, that Fox News had been one of the primary vehicles for the claims about Smartmatic, including Ms. Pirro. Nor did Ms. Booth acknowledge that the Defendants never qualified their statements about Smartmatic as opinion.

237. Nonetheless, after Ms. Boothe's introduction, the segment again cut to the pre-recorded video of Mr. Perez and Mr. Perez again told people there was no evidence for the claims against Smartmatic:

a. Speaker: "Have you seen any evidence that Smartmatic software was used to flip votes anywhere in the U.S. in this election?" Eddie Perez: "I have not seen any evidence that Smartmatic software was used to delete, change, alter - anything related to vote tabulation."

b. Speaker: "Smartmatic says its software was never used outside of L.A. County in 2020. Do you know whether or not that's true?" Eddie Perez: "That is my understanding. I am not aware of them having any other direct customers [or] relationships with election officials in the United States."

c. Speaker: "What about Smartmatic and Dominion, do you know if they're related, whether one owns the other, whether Dominion uses Smartmatic software?" Eddie Perez: "Both Dominion and Smartmatic have individually and respectively put out very clear statements from their corporate headquarters, each of them indicating they are independent companies, they are not related to each other."

d. Speaker: "Have you seen any evidence of a connection between George Soros and Smartmatic?" Eddie Perez: "I'm not aware of any direct

connection between George Soros and Smartmatic. It is my understanding that an executive at Smartmatic has some sort of relationship with one of Soros's foundations. That's the extent of my knowledge."

e. Speaker: "Have you seen any evidence of Smartmatic sending U.S. votes to be tabulated in foreign countries?" Eddie Perez: "No. I'm not aware of any evidence that Smartmatic is sending U.S. votes to be tabulated in foreign countries. As others have pointed out, irrespective of which voting technology vendor we're talking about, in the United States, the ballots that are cast in the United States are tabulated in the United States."

f. Speaker: "Are you aware of any instances in which Smartmatic's technology was banned in the U.S. in 2020 due to security weaknesses or wrongdoing?" Eddie Perez: "I am not. I'm not aware of any instances where Smartmatic's technology was banned in the U.S. Again, it is my understanding that outside of one customer in Los Angeles County, Smartmatic has no presence in the voting technology marketplace in the United States."

238. Finally, on December 20, Ms. Bartiromo had the opportunity to acknowledge that Fox News did not have any evidence for the claims that she and others had been spreading about Smartmatic. (*Sunday Morning Futures with Maria Bartiromo*, December 20, 2020 (Exhibit 46)). Ms. Bartiromo made the following introduction:

> Welcome back. In our weekslong look into election integrity, we have heard concerns about both voting machines and voting software, specifically a software company called Smartmatic. This week we reached out to Eddie Perez for insight. He is the Global Director of tech development at the Open Source Election Technology Institute. His team develops Open Source

> Software for elections. We asked him what he knew about Smartmatic and the claims some have made about that company.

239. Like Mr. Dobbs and Ms. Boothe (standing in for Ms. Pirro), Ms. Bartiromo did not acknowledge the role the Fox Defendants had in manufacturing "concerns" about Smartmatic. She did not acknowledge the baseless statements she had made about the company. Nor did she acknowledge the baseless statements she allowed and encouraged Mr. Giuliani and Ms. Powell to make on her programs.

240. After Ms. Bartiromo's introduction, the segment cutaway to the now familiar Mr. Perez in a book-lined room answering questions from an unidentified voice. The same acknowledgement:

a. Speaker: "Have you seen any evidence that Smartmatic software was used to flip votes anywhere in the U.S. in this election?" Eddie Perez: "I have not seen any evidence that Smartmatic software was used to delete, change, alter - anything related to vote tabulation."

b. Speaker: "Smartmatic says its software was never used outside of L.A. County in 2020. Do you know whether or not that's true?" Eddie Perez: "That is my understanding. I am not aware of them having any other direct customers [or] relationships with election officials in the United States."

c. Speaker: "What about Smartmatic and Dominion, do you know if they're related, whether one owns the other, whether Dominion uses Smartmatic software?" Eddie Perez: "Both Dominion and Smartmatic have individually and respectively put out very clear statements from their corporate headquarters. Each of them indicating they are independent companies, they are not related to each other."

d. Speaker: "Have you seen any evidence of a connection between George Soros and Smartmatic?" Eddie Perez: "I'm not aware of any direct connection between George Soros and Smartmatic. It is my understanding that an executive at Smartmatic has some sort of relationship with one of Soros's foundations. That's the extent of my knowledge."

e. Speaker: "Have you seen any evidence of Smartmatic sending U.S. votes to be tabulated in foreign countries?" Eddie Perez: "No. I'm not aware of any evidence that Smartmatic is sending U.S. votes to be tabulated in foreign countries. As others have pointed out, irrespective of which voting technology vendor we're talking about, in the United States, the ballots that are cast in the United States are tabulated in the United States."

f. Speaker: "Are you aware of any instances in which Smartmatic's technology was banned in the U.S. in 2020 due to security weaknesses or wrongdoing?" Eddie Perez: "I am not. I'm not aware of any instances where Smartmatic's technology was banned in the U.S. Again, it is my understanding that outside of one customer in Los Angeles County, Smartmatic has no presence in the voting technology marketplace in the United States."

241. Mr. Perez did not tell the Fox Defendants anything that they did not already know. The Fox Defendants already knew there was no evidence for any of the statements and implications being made about Smartmatic. The Fox Defendants had not found any evidence themselves and had not been shown any evidence by Mr. Giuliani and Ms. Powell.

242. Mr. Perez was always available to the Fox Defendants. The Fox Defendants could have put Mr. Perez on the air at any time prior to December 18. Fox News could have used Mr. Perez on *Lou Dobbs Tonight, Mornings with Maria, Sunday Morning Futures with Maria Bartiromo*, or *Justice with Judge Jeanine* at any time prior to December 18 to tell people that the statements being made about Smartmatic were baseless. The Fox Defendants did not put Mr. Perez on the air until after receiving Smartmatic's retraction demand letter because the Fox Defendants had agreed with Mr. Giuliani and Ms. Powell to spread the disinformation campaign for as long as they could.

3. Fox News knew its anchors and guests lacked a basis for their statements and implications about Smartmatic.

243. On November 21, Jesse Watters hosted his program, *Watters' World*. (*Watters' World*, November 21, 2020 (Exhibit 30)). Mr. Dobbs appeared on the program and discussed a "cyber-attack" being used to overthrow "our government" and "our way of life." Mr. Watters also played clips of Ms. Powell saying: "One of its most characteristic features is its ability to flip votes. It can set and run an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden." Mr. Watters stated that his research team was investigating Ms. Powell's claims:

> Another lawyer, Sidney Powell, claims she has whistleblower testimony and significant circumstantial evidence proving that software in the vote machines rigged vote counts for Joe. If this is true, it's the biggest scandal in American political history. It's an extremely technical and controversial allegation. So Watters' World producers have been looking into it and we're going to show you exactly what we found coming up later in the show.

244. Later in the show, Mr. Watters stated: "Watters' World doesn't have access to Sidney Powell's catalog, so researchers on our team spent a very long time going through her

claims. We're going to report tonight on what we were able to verify, based off of what she said."

Here is what they reported about Smartmatic:

> Now, Smartmatic, the vote technology company, did supply voting machines to the Venezuelan government of Hugo Chávez. And according to the New York Times, there was a minor stake in the company that overlapped. In 2017, the CEO of Smartmatic admitted that the Venezuelan government had been tampered with and the count was falsely inflated by a million votes. Smartmatic is foreign owned, with the controlling interest by Antonio Mugica, a dual Spanish-Venezuelan national. George Soros does not have any ownership stake. This is what our team has been able to verify from Sidney Powell's allegations and we're going to continue to look into further developments so all Americans have confidence in our election.

245. Mr. Watters did not get everything right. For example, he failed to report that Smartmatic publicly announced that the Venezuelan government had reported election results that differed from the actual vote count, and that Smartmatic ceased participating in elections in Venezuela afterwards.

246. Mr. Watters' statement, nonetheless, was an acknowledgement that researchers at Fox News could not verify the critical claims being made against Smartmatic. They could not verify that (a) Smartmatic's election technology and software were widely used in the 2020 U.S. election, (b) Dominion used Smartmatic's software, (c) Smartmatic's election technology and software were used to fix, rig, or steal the 2020 U.S. election, (d) Smartmatic sent votes overseas for counting during the 2020 U.S. election, (e) Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election, (f) Smartmatic had previously been banned in the United States, and (g) Smartmatic's election technology and software were designed to fix, rig, and steal elections.

247. Fox News had devoted significant attention since November 12 to spreading a disinformation campaign against Smartmatic by the time Watters' World announced its research team's findings. If Fox News had anything to support what Ms. Powell (and Mr. Giuliani and the

Fox Defendants) had been saying about Smartmatic, it would have come to the attention of the Watters' World research team. Nothing did. Fox News knew its anchors and guests were making baseless claims against Smartmatic.

248. The research team at Watters' World was not the only one at Fox News confirming that Fox News did not have a basis for the claims being made on *Lou Dobbs Tonight, Sunday Morning Futures with Maria Bartiromo, Mornings with Maria,* and *Justice with Judge Jeanine.*

249. On November 15, Eric Shawn, a New York-based anchor and senior correspondent for Fox News made clear the absence of support for the statements being made by the Defendants. (*Fox News*, November 15, 2020 (Exhibit 132)). He said:

> Eric Shawn: Well, let's clarify the election facts as we know them right now. Rigged election? Well your own government, election officials across the country and voting experts say it's not true. Baseless claims that they are inflammatory designed to undermine your faith in American democracy. Here's the chairman of the federal agency, the US Election Assistance Commission, Ben Huffman.
>
> Ben Huffman: The reality is this was the most secure election we've ever had, and it was one of the most well-run elections we've ever had. And this is about facts, this is about truth. This is about respecting our democracy, respecting our elections, and focusing on what has really occurred. The American people made their voice heard. And when we spread conspiracy theories, when we don't back that up with facts, it has an impact.
>
> ***
>
> Eric Shawn: You know prosecutors say that any voter or election fraud allegations will be thoroughly investigated. And if the fix were in, if there was wrongdoing, we will know about it. But election officials across the country insist as of today, there is no evidence of any widespread fraud affecting the outcome of the presidential election. That our precious democracy was not tampered with. And that such baseless and false claims are an insult to the thousands of election officials and workers across the country, who we have seen dedicating themselves 24/7 to ensure a fair and free election for all of us.

250. Mr. Shawn's statement came early in the disinformation campaign – only three days after the Fox Defendants joined the conspiracy with Mr. Giuliani, and Ms. Powell to spread

"baseless and false claims" about Smartmatic. Mr. Shawn's statement further indicates that Fox News knew that the statements being made by the other Fox Defendants, Mr. Giuliani and Ms. Powell were divorced from fact. Mr. Shawn would not have made his statements if Fox News had marshaled sources in support of the statements and implications that were being made about Smartmatic.

251. One of Fox News's most prominent anchors likewise acknowledged that Ms. Powell had not provided any evidence to support any of her claims about Smartmatic. On November 19, Tucker Carlson wrote an article titled: "Tucker Carlson: Time for Sidney Powell to show us her evidence." (11/19/20 Tucker Carlson Article (Exhibit 136)). He wrote the following:

> For more than a week, Powell has been all over conservative media with the following story: This election was stolen by a collection of international leftists who manipulated vote tabulating software in order to flip millions of votes from Donald Trump to Joe Biden. The other day on television, Powell said of Trump that when the fraud is finally uncovered, "I think we'll find he had at least 80 million votes." In other words, rigged software stole about seven million votes in this election.
>
> On Sunday night, "Tucker Carlson Tonight" texted her after watching one of her segments. What Powell was describing would amount to the single greatest crime in American history. Millions of votes stolen in a day, democracy destroyed, the end of our centuries-old system of self-government. Not a small thing.
>
> ***
>
> That's a long way of saying we took Sidney Powell seriously, with no intention of fighting with her. We've always respected her work and we simply wanted to see the details. How could you not want to see them? So we invited Sidney Powell on the show. We would have given her the whole hour. We would have given her the entire week, actually, and listened quietly the whole time at rapt attention.
>
> But she never sent us any evidence, despite a lot of polite requests. When we kept pressing, she got angry and told us to stop contacting her. When we checked with others around the Trump campaign, people in positions of authority, they also told us Powell had never given them any evidence to prove anything she claimed at the press conference.

> Powell did say that electronic voting is dangerous, and she's right, but she never demonstrated that a single actual vote was moved illegitimately by software from one candidate to another. Not one.

252. Mr. Carlson is a respected figure within Fox News. Fox News would have shared evidence supporting the claims being made against Smartmatic if any of the Fox Defendants had such evidence. Fox News would not have allowed Mr. Carlson to point out Ms. Powell's failure to provide any evidence to support her claims if any of the Fox Defendants had seen such evidence. But, the Fox Defendants had not seen any evidence from Ms. Powell or Mr. Giuliani, and they had not identified any evidence themselves.

4. Defendants purposefully avoided learning the truth about Smartmatic and its election technology and software.

253. Defendants knew that they had no factual basis for their statements and implications about Smartmatic. Several of Defendants' statements required the speaker to have conducted analysis to support and substantiate the statement – such as how election technology and software could theoretically switch votes. On information and belief, Defendants knew that they had not conducted, and did not possess, the research or analysis necessary to support their statements. Defendants made the statements knowing they lacked a factual basis for the statements.

254. Defendants also intentionally avoided obtaining information from Smartmatic. Neither Mr. Giuliani nor Ms. Powell ever contacted Smartmatic to verify any statements they made. The Fox Defendants only reached out to Smartmatic on November 16, 2020, well into the disinformation campaign and after 24 false statements had been made. The Fox Defendants made no attempt to contact Smartmatic to obtain information prior to November 16, 2020. By that time, Fox News had aired three TV broadcasts, published four news reports online, and posted five times on social media about Smartmatic.

255. Despite making numerous statements about Smartmatic relating to fraudulent and criminal activity, when Fox News finally reached out to Smartmatic on November 16, it just asked what states and/or counties Smartmatic's election technology and software were used in during the 2020 U.S. election. A very basic question. Then, on November 17, Fox News asked only whether Smartmatic had any input into the CISA's November 12 statement disputing allegations of election fraud (which was answered in the negative). Fox News did not take the opportunity to ask any other questions that could provide the Fox Defendants with any other facts related to the wide-ranging claims being made against Smartmatic during the disinformation campaign.

256. The Fox Defendants also intentionally avoided interviewing and broadcasting statements from election technology experts who could have provided facts about Smartmatic and its election technology and software. It was not until December 18 that Fox News published statements from an election expert (Eddie Perez) to address and refute the statements made about Smartmatic and its technology and software. On information and belief, the Fox Defendants avoided these experts because the facts they would have offered would be inconsistent with the story Defendants wanted to convey about Smartmatic.

257. Fox News had previously interviewed various cybersecurity and election technology experts on air, including on issues related to the election process and voting machines in 2018, 2019, and 2020. The Fox Defendants failure to broadcast interviews with any such experts during the disinformation campaign is consistent with not wanting to learn the truth about Smartmatic and not wanting to publish the truth.

B. Defendants had access to information showing their statements and implications about Smartmatic and its technology and software were factually inaccurate.

258. Defendants knew their statements and implications regarding Smartmatic and its technology and software were false, or they acted with reckless disregard for the truth when

making their statements. Defendants possessed and/or had access to information that showed their statements were false. Defendants also made statements for which they had no factual basis.

1. Defendants knew Smartmatic's election technology and software were not widely used in the 2020 U.S. election (and were not used in contested states).

259. A myriad of information was available to Defendants that showed their statements and implications about Smartmatic and the use of its technology and software for the 2020 U.S. election (and in contested states) were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

260. First, before the disinformation campaign, there was publicly available and easily accessible information showing what company's election technology and software were selected for and used in each state in the country (and by county), including in contested states such as Georgia, Michigan, Pennsylvania, Arizona, Wisconsin, and Nevada.

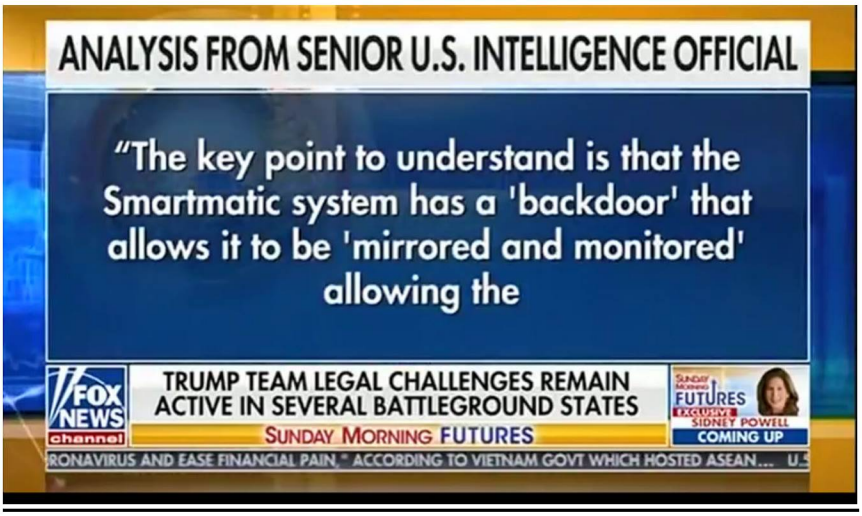
261. Each state publicly disclosed the election technology used in the 2020 U.S. election. This information showed that Smartmatic did not provide or manufacture any technology or software in any contested states discussed by Defendants.

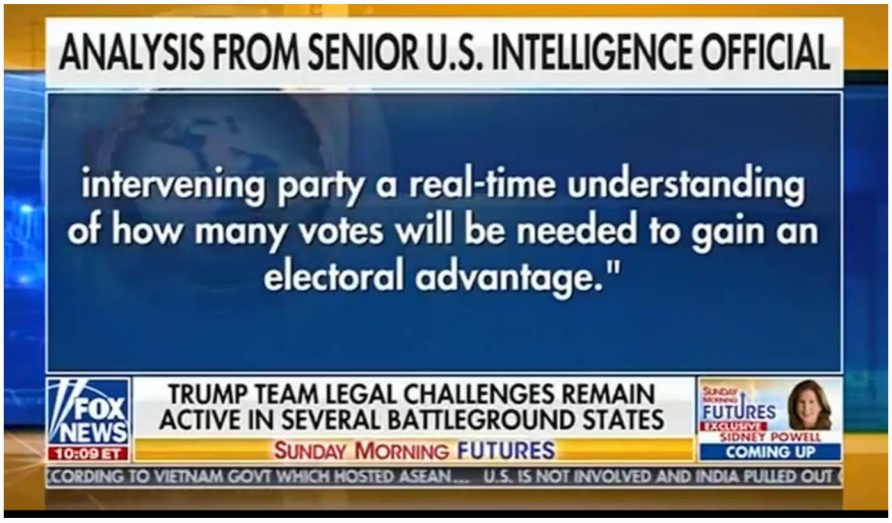
262. For example, on November 12, Mr. Dobbs gave an update on Dominion and Smartmatic on *Lou Dobbs Tonight*, asking Mr. Giuliani how important the concerns were being expressed by a number of states about the ability of their machines to be hacked. Mr. Giuliani told Mr. Dobbs that the machines can be hacked and specifically named Smartmatic and its software. In discussing this hacking, Mr. Giuliani stated: "What the heck was Georgia doing in hiring this company?" However, there was publicly available information from the state of Georgia at the time that showed that Dominion and Smartmatic were two separate companies and that

Smartmatic's election technology was not used by Georgia in the 2020 U.S. election. This was similarly true for other states.

263. The states of Michigan and Pennsylvania were also mentioned on *Lou Dobbs Tonight* on November 12 with Mr. Giuliani. Again, there was publicly available information from these states at the time that showed that Smartmatic was not being used in the 2020 U.S. election in the states of Michigan or Pennsylvania.

264. Take another example: on November 15, Ms. Bartiromo and Mr. Giuliani had an exchange where Ms. Bartiromo stated that the Dominion and Smartmatic voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. Ms. Bartiromo put up a graphic (shown below) to show the states that she claimed stopped counting in the middle of election night, and then said that the Smartmatic system has a backdoor that allows votes to be mirrored and monitored to allow improper intervention.





265. Again, there was publicly available information from each of these states at the time that showed Smartmatic was not used in their 2020 elections. The role of Smartmatic in the contested states was easy to determine and contradicted the entire narrative about Smartmatic being a player in any way in the U.S. election controversy. For example:

266. Georgia: In 2019, Georgia's RFP process demonstrated that Smartmatic was not chosen for the 2020 U.S. election. In response to the RFP, three separate companies submitted a bid. Those companies were: (1) ES&S, (2) Smartmatic, and (3) Dominion. Georgia chose two companies to advance in the process and to undergo further consideration: ES&S and Dominion. Smartmatic was not chosen. After further process with ES&S and Dominion, Dominion got the

contract with Georgia. (11/30/20 Georgia Press Conference on 2020 Election Recount Update Transcript (Exhibit 57)). The State of Georgia also publicly disclosed that it was using Dominion's election technology for the 2020 U.S. election – not Smartmatic. (Georgia Secretary of State Press Release, Security-Focused Tech Company, Dominion Voting to Implement New Verified Paper Ballot System (Exhibit 58); 8/9/19 Office of Georgia Secretary of State Certification for Dominion Voting System (Exhibit 54)).

267. Michigan: On January 24, 2017, Michigan's State Administrative Board approved only three vendors of voting systems: Dominion, ES&S, and Hart InterCivic. (Michigan Secretary of State Jocelyn Benson, *Voting System Purchase* (Exhibit 61[7])). In early November, the State of Michigan publicly identified the use of the Dominion election management system and voting machines. There was no mention of Smartmatic. (11/6/20 Michigan Department of State Press Release (Exhibit 62)). The Secretary of State for Michigan also had a voting systems map on its website that identified the vendor/manufacture for different locations. The map identified three companies: (1) Dominion, (2) Hart InterCivic, and (3) ES&S. Smartmatic was not identified. Michigan Voter Information Center, *Voting Systems Map* (Exhibit 60)).

268. Pennsylvania: The state of Pennsylvania publicly identified the election technology and software certified for use on its website. ES&S and Dominion were identified for use by Pennsylvania. Smartmatic was not identified. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 64)). Pennsylvania was explicit in the voting systems available for use in the 2020 general election. On April 4, 2018, Acting Secretary of State Robert Torres required each of Pennsylvania's 67 counties to select new voting systems by no later than December 31, 2019, and to implement them no later than the June 2, 2020 primary

[7] A*vailable at* https://www.michigan.gov/sos/0,4670,7-127-1633_11976_78903---,00.html.

election. (Pennsylvania Pressroom, *Department of States Tells Counties To Have New Voting Systems In Place By End Of 2019* (Exhibit 65[8])). The Pennsylvania Department of State subsequently certified the following providers of electronic voting systems: (1) Unisyn, (2) ES&S, (3) Dominion, (4) ClearBallot, and (5) Hart Verity Voting. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 64[9])). Counties then had the option to choose only from seven electronic voting systems offered by those five providers. Smartmatic was not one of them. (*Votes PA: New Voting Systems* (Exhibit 66[10])).

269. Arizona: The state of Arizona publicly identified the election technology and software used for the 2020 U.S. election by manufacture on its website. Smartmatic was not one of them. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 59)).

270. Wisconsin: In February 2020, the state of Wisconsin published a list of the voting equipment used by each municipality within the State. Smartmatic appears nowhere on that list. Wisconsin Election Commission, *Voting Equipment List by Municipality February 2020* (Exhibit 71)). In addition, the Wisconsin election commission publicly identified the approved voting equipment manufacturers on its website. Smartmatic was not identified. (Wisconsin Election Commission, *Voting Equipment* (Exhibit 72)).

271. Nevada: As of November 2020, all jurisdictions in Nevada used voting systems from either Dominion or ES&S. Smartmatic was not used. (Nevada Secretary of State: *Voting System* (Exhibit 74[11])).

[8] *Available at* https://www.media.pa.gov/Pages/State-Details.aspx?newsid=276.

[9] *Available at* https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/Voting-Systems.aspx,

[10] *Available at* https://www.votespa.com/About-Elections/Pages/New-Voting-Systems.aspx,

[11] *Available at* https://www.nvsos.gov/sos/elections/election-resources/voting-system

272. Second, before the disinformation campaign, it was widely known that another company, ES&S, was the nation's largest manufacturer of voting technology. It was also widely known that three main election technology companies dominated the U.S. market for elections: (1) ES&S, (2) Dominion, and (3) Hart InterCivic. This list did not include Smartmatic**.** For example:

a. On October 29, 2018, it was reported that a trio of companies—ES&S, Dominion, and Hart InterCivic—sell and service more than 90 percent of the machinery on which votes in the country are cast and results tabulated. (10/29/18 AP Article, *US election integrity depends on security-challenged firms* (Exhibit 110[12]); 10/29/18 AP Article, *Security-challenged firms are gatekeepers of US elections* (Exhibit 111[13])).

b. On March 27, 2019, Senator Amy Klobuchar and others sent a letter to the country's three largest election system vendors with questions on their security in anticipation of the 2020 U.S. election. Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (3/27/19 Klobuchar Press Release, *Ranking Members Klobuchar, Warner, Reed, and Peters Press Election Equipment Manufacturers on Security* (Exhibit 112)).

c. On December 6, 2019, Senators Elizabeth Warren, Amy Klobuchar, and others sent letters to the private equity firms that owned or had investments in the vendors responsible for the "vast majority of voting machines and

[12] A*vailable at* https://www.foxbusiness.com/features/us-election-integrity-depends-on-security-challenged-firms.

[13] A*vailable at* https://www.foxbusiness.com/markets/security/security-challenged-firms-are-gatekeepers-of-us-elections.

software in the United States" with questions in anticipation of the 2020 U.S. election, noting that these vendors collectively distribute voting machines and software for "over 90% of all eligible voters in the United States." Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (12/10/19 Warren Press Release, *Warren, Klobuchar, Wyden, and Pocan Investigate Vulnerabilities and Shortcomings of Election Technology Industry with Ties to Private Equity* (Exhibit 116)). Defendant Powell, in fact, attached these letters to a complaint she filed in Georgia on November 26, 2020, an amended complaint she filed in Michigan on November 29 2020, a complaint she filed in Wisconsin on December 1, 2020, a complaint she filed in Arizona on December 2, 2020, and an amended complaint she filed on December 3, 2020 in Wisconsin. *See* 20-CV-04809 Docket #1-26 (Georgia), 20-CV-01771 Docket #1-24 (Wisconsin), 20-CV-13134 Docket #6-16 (Michigan), 20-CV-2321 Docket #1-7 (Arizona), 20-CV-01771 Docket #9-16 (Wisconsin).

d. On October 28, 2019, it was reported that half the country votes on machines made by ES&S. (10/28/19 ProPublic Article, *The Market for Voting Machines is Broken. This Company Has Thrived in It* (Exhibit 114)).

e. On May 2, 2019, it was reported that three companies dominate the market for voting machines in the country, with ES&S being the largest, followed by Dominion and Hart InterCivic. (5/2/19 NPR Article, *Trips to Vegas and*

Chocolate-Covered Pretzels: Election Vendors Come Under Scrutiny (Exhibit 113)).

f. On March 3, 2020, it was reported that ES&S, Dominion, and Hart InterCivic "together control about 90 percent of the U.S. market for voting systems." (11/3/20 Politico Article, *Playbook PM: Halftime* (Exhibit 123)).

g. On October 28, 2020, it was reported that ES&S and Dominion together produce the technology used by over three-quarters of U.S. voters, and the third-largest player was Hart InterCivic. (10/28/20 WSJ Article, *Early Voting Shines Spotlight on Consolidated Voting-Equipment Market* (Exhibit 121)).

273. This type of publicly available information showed that Smartmatic's election technology was not widely used in the 2020 U.S. election and was not used in contested states.

274. Third, each major company or manufacturer of election technology and software identified on their own websites the use of their technology or software in the 2020 U.S. election before and during the disinformation campaign. This also showed the very limited use of Smartmatic's technology and software in the 2020 U.S. election (*i.e.*, only in one county in California). For example:

275. ES&S: Before and during the disinformation campaign, ES&S's website provided information that contradicted statements by Defendants about the use of Smartmatic's election technology in the 2020 U.S. election. For example, ES&S's website identified the wide use of its voting machines in the country, including its success in the 2020 election in Wisconsin and Pennsylvania jurisdictions (both within contested states) and touted the success of its high-speed ballot counting technology. (11/1/20 ES&S Website, *Getting the facts straight about elections*

(Exhibit 96); 11/11/20 ES&S Website, *ES&S Equipment Efficiently, Accurately, Securely Records Election History* (Exhibit 97); 11/26/20 ES&S Website, *Getting the facts straight about elections updated* (Exhibit 98)).

276. Hart InterCivic: Before and during the disinformation campaign, Hart InterCivic's website provided information that contradicted statements by Defendants about the use of Smartmatic's election technology in the 2020 U.S. election. For example, Hart InterCivic's website identified the wide use of its technology systems in the country. (9/25/20 Hart Website, *Voting System Security Technology* (Exhibit 99); 9/28/20 Hart Website, *More Texas Counties Choose Hart InterCivic's Verity Voting* (Exhibit 100)).

277. Dominion: Before and during the disinformation campaign, Dominion's website provided information that contradicted statements by Defendants about the use of Smartmatic's election technology in the 2020 U.S. election. For example, Dominion's website identified that it was serving customers in 28 states and Puerto Rico. Its website indicates the states in which its machines were used for the 2020 election. (11/1/20 Dominion Website, *About Dominion* (Exhibit 87)).

278. Fourth, Smartmatic's website provided information about the company, its technology and software, and its limited role in the 2020 U.S. election. Smartmatic's website stated as of November 14 that Smartmatic's ballot marking devices were "used exclusively in Lose [sic?] Angeles County" and "were not used in any other state or any other jurisdiction in California or anywhere else in the U.S." (11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 83)). Smartmatic's website stated as of November 16 that Smartmatic voting machines were specifically not used in Pennsylvania, Georgia, Arizona, Nevada, Michigan, or North Carolina. (11/16/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 84)).

279. On information and belief, Defendants were aware of the factual information from the Smartmatic website, particularly as it relates to the states where Smartmatic's election technology and software were and were not used in the 2020 U.S. election. Before and during the disinformation campaign, there was information available that identified Smartmatic's limited role in the 2020 U.S. election. In fact, when Fox News finally contacted Smartmatic, it referenced fact check pages from Smartmatic's website, including *Fact-checked* and *Response to Misinformation*. (11/16/20 Fox News and Smartmatic Email Chain re: Press Contact from Smartmatic.com (Exhibit 81)*; see also* Smartmatic Website, 11/14/20 *Smartmatic Fact-checked* (Exhibit 83)).

280. On information and belief, the Defendants were also aware that Smartmatic's VSAP technology used in Los Angeles County was owned by the county, had been created by employees in Smartmatic's U.S.-based office, and that all code used in the system was developed in the United States and had never been offshore. (*See, e.g.*, 3/3/20 Politico Article, *Los Angeles County's risky voting experiment* (Exhibit 117)).

281. Fifth, during the disinformation campaign, Smartmatic specifically told Fox News about its limited role in the 2020 U.S. election and that it did not have input to any statement by CISA rejecting allegations of election fraud.

282. On November 16, within an hour of being contacted, Smartmatic responded to an email from Fox News to Smartmatic's communications contact. (11/16/20 Fox News and Smartmatic Email Chain re: Press Contact from Smartmatic.com (Exhibit 81)). Smartmatic's communications director told Fox News:

a. "During the 2020 U.S. Presidential Election, we provided technology and software only to Los Angeles County ballot marketing devices. We had no

involvement, direct or indirect, in any other county or state in the United States."

b. "We do not provide any software to tabulate, tally or count votes in any county or state."

283. On November 17, within two hours of being contacted, Smartmatic responded to another email from Fox News to Smartmatic's communications contact. (11/17/20 Smartmatic to Fox News Email (Exhibit 82)). Smartmatic's communications director told Fox News:

a. "Smartmatic did not have input to the CISA statement to which you are referring [CISA's November 12 statement disputing allegations of election fraud]. Only members of the CISA Executive Committee (EC) would have been eligible to give input to its drafting. Those EC members are the signatories on the document."

284. Fox News did not attempt to email Smartmatic to obtain basic information, such as its role in the 2020 U.S. election, before its first broadcast accusing Smartmatic of fraud in connection with the election. This could have been easily done, and it is telling that the Fox Defendants avoided getting this type of information from the company.

285. Sixth, organizations involved in certifying voting technology like the Election Assistance Commission (EAC) published information about the use of election technology in the 2020 U.S. election.

286. For example, all the states where Defendants Giuliani and Powell claimed fraud occurred use some aspect of the federal testing and certification program for election technology and software. (NCSL Voting System Standards, *Testing and Certification* (Exhibit 144)). The U.S. Election Assistance Commission (EAC) publicly identifies the voting systems that have been

certified by the EAC by county and state. It provides a table on its website where a user can determine the manufacturer, product, and version of any technology and software used. It shows that Smartmatic was not used in any of the contested states. (U.S. EAC System Certification Process and Table of Voting Systems (Exhibit 145)).[14]

287. Seventh, before and during the disinformation campaign, organizations who identify and track election and voting equipment made information publicly available that showed the limited role of Smartmatic and its election technology and software in the 2020 U.S. election. For example, Verified Voting (http://www.verifiedvoting.org) keeps a running map of all voting equipment in the United States, broken down by county. Anyone can get on the website and look up any county in the United States and determine whether a company's voting technology or software was used, and obtain detailed descriptions of it. (Verified Voting Website, *The Verifier – Search – November 2020* (Exhibit 146)).

2. Defendants knew Smartmatic's election technology and software were not used to fix, rig, or steal the 2020 U.S. election.

288. A myriad of information was available to Defendants that showed their statements about Smartmatic and the use of its technology and software to fix, rig, and steal the 2020 U.S. election were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

289. First, before and during the disinformation campaign, there was publicly available and easily accessible information showing that Smartmatic's technology and software were not used widely in the 2020 U.S. election (and only in Los Angeles County) and thus could not have been used to fix, rig, or steal a national election. This information is discussed above. This

[14] See *also* https://www.eac.gov/voting-equipment/system-certification-process).

information also made clear that the system Smartmatic provided to Los Angeles County does not count, tabulate, or store votes and that County officials tabulate the votes by counting the paper ballots produced by the system and cast by voters. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85); Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 128)).

290. Second**,** before the disinformation campaign, there was publicly available and easily accessible information showing the efforts around securing the 2020 U.S. election, which make claims of a fixed, rigged, and stolen election not credible.

291. For example, a joint statement was issued by national security agencies confirming the security of the election infrastructure and process in place for the 2020 U.S. election and that any threats to the election would be vigilantly monitored. On November 5, 2019, the Department of Justice (Attorney General William Barr), the Department of Defense (Secretary Mark Esper), the Department of Homeland Security (Acting Secretary Kevin McAleenan), the Office of the Director of National Intelligence (Acting Director Joseph Maguire), the FBI (Director Christopher Wray), the National Security Agency (U.S. Cyber Command Commander and Director Gen. Paul Nakasone), and the Cybersecurity Infrastructure Security Agency (Director Christopher Krebs) issued a joint statement.

292. In the statement, they stated that "[e]lection security is a top priority for the U.S. government" and that "[i]n an unprecedented level of coordination, the U.S. government is working with all 50 states and territories, local officials, and private sector partners to identify threats, broadly share information, and protect the democratic process." "While at this time we have no evidence of a compromise or disruption to election infrastructure that would enable adversaries to prevent voting, change vote counts, or disrupt the ability to tally votes, we continue to vigilantly monitor any threats to U.S. elections." (11/5/19 FBI National Press Office, *Joint*

Statement from DOJ, DOD, DHS, DNI, FBI, NSA, and CISA on Ensuring Security of 2020 Elections (Exhibit 115)). No such threats were identified or reported by any of these agencies.

293. Third, before and during the disinformation campaign, election experts and officials published statements rejecting any claims of vote rigging for the 2020 U.S. election. No state or federal government officials identified Smartmatic and its election technology and software as being used or even potentially implicated in a computer fraud to fix, rig, or steal the 2020 U.S. election.

294. Indeed, election officials and election security experts have long been clear that voter fraud is extraordinarily rare, and our system has strong checks in place to protect the integrity of the voting process in the country. For example:

295. On September 24, 2020, Christopher Wray, Director of the FBI, stated during a hearing before the U.S. Senate Committee on Homeland Security and Government Affairs that "we have not seen, historically, any kind of coordinated national voter fraud effort in a major election, whether it's by mail or otherwise." (9/24/20 CNN Transcript (Exhibit 120); *see also* 9/24/20 C-SPAN Website, *FBI Director Says He Has Not Seen National Voter Fraud Effort by Mail*[15]).

296. On November 4, 2020, the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASED) issued a statement: "[o]ver the course of the election, more than 100 million ballots were safely and securely cast, both in-person and by mail." (11/4/20 Post-Election Joint Statement from NASS and NASED (Exhibit 124)).

297. The NASS and NASED also issued a joint statement on October 30, 2020 to "express their confidence in [the] nation's elections systems, processes, safety and security." It

[15] *Available at* http://www.c-span.org.video/?c4909510/fbi-director-national-voter-fraud-effort-mail

further stated that "[s]tate election officials have been working diligently to bolster cybersecurity, strengthen existing infrastructure, address election misinformation and disinformation, as well as provide administrative and technical support for local election officials." And it made clear that "[v]oters and members of the media should be diligent in the face of election misinformation. Think critically about the source of information before repeating or retweeting it ... contact your election official with any questions or concerns and follow verified election official social media accounts." (10/30/20 NASS and NASED 2020 Election Preparations and Reminders (Exhibit 122)).

298. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a definitive statement that "[t]he November 3rd election was the most secure in American history." It further stated, "[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised." And "[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission's (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020." (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastrucutre Sector Coordinating Executive Committee* (Exhibit 130)).

299. On November 16, 2020, a group of election security specialists issued a statement saying that there was no credible evidence of computer fraud in the 2020 election outcome. These specialists indicated they had studied the security of voting machines, voting systems, and technology used for government elections for decades. They stated "[a]nyone asserting that a US election was 'rigged' is making an *extraordinary* claim, one that must be supported by persuasive

and verifiable evidence. Merely citing the existence of technical flaws does not establish that an attack occurred, much less that it altered an election outcome. It is simply speculation." Further, "[w]e are aware of alarming assertions being made that the 2020 election was 'rigged' by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent. To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise." (11/16/20 Letter from Election Security Specialists (Exhibit 134)).

300. On November 19, 2020, it was reported that a spokeswoman for the National Association of Secretaries of State (NASS) said, "[e]lections in the United States of America are administered, run, counted and certified by state and local election officials. We have never heard of votes being tabulated in a foreign country." (11/19/20 Verify, *No evidence that presidential election votes were tallied overseas* (Exhibit 137)).

301. On November 29, 2020, a piece was published in which Chris Krebs, Former Director of the CISA, stated that election day "was quiet. And there was no indication or evidence that there was any evidence of hacking or compromise of election systems on, before, or after November 3 ... We did a good job. We did it right. I'd do it a thousand times over." (11/30/20 CBS News, *Fired Director of U.S. Cyber Agency Chris Krebs Explains Why President Trump's Claims of Election Interference Are False* (Exhibit 141)).

302. On December 1, 2020, Attorney General William Barr stated that "To date, [DOJ investigators] have not seen fraud on a scale that could have effected a different outcome in the election." (12/1/20 AP Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 142)).

303. Fourth, individual states that were contested in the 2020 U.S. election performed audits and/or issued statements verifying their election process and rejecting claims of fraud or rigging. For example:

304. Georgia: A November 19, 2020 Audit Report for the Georgia Presidential Contest stated "[f]rom November 11 to November 19, 2020, county election officials in Georgia, conducted a statewide risk-limiting audit of the Presidential Contest from the November 2020 General Election, as ordered by the Georgia Secretary of State." In reporting the outcome, it noted "the audit confirmed the original result of the election, namely that Joe Biden won the Presidential Contest in the State of Georgia." (emphasis in original) (11/19/20 Georgia Risk-Limiting Audit Report (Exhibit 55); *see also* 11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 56) ("Due to the tight margin of the race and the principles of risk-limiting audits, this audit was a full manual tally of all votes cast. The audit confirmed that the original machine account accurately portrayed the winner of the election.").

305. On November 30, 2020, Georgia's Secretary of State, Brad Raffensperger, held a press conference and made clear that none of the allegations of potential election violations cast doubt on the integrity of the state's election results. At the conference, he stated: "There are those who are exploiting the emotions of many Trump supports with fantastic claims, half-truths, misinformation, and, frankly, they are misleading the President as well apparently." (11/30/20 Georgia Press Conference on 2020 Election Recount Update Transcript (Exhibit 57)).

306. On January 6, 2021, Georgia's Secretary of State, Brad Raffensperger, sent a letter to Congress with a "Point by Point Refutation of False Claims about Georgia Elections." It described the multiple steps taken to confirm that the Presidential selection result was accurate and

the software on the voting machines was accurate. It includes a section that addresses the allegations regarding Dominion Voting Machines and clearly states the claims were false. (1/6/21 Georgia Secretary of State Letter to Congress (Exhibit 59)).

307. Michigan: Michigan's Bureau of Election made information about its election security available on its website, www.Michigan.gov/ElectionSecurity, including that "[t]here is no evidence voting machines in Michigan have ever been compromised or that votes have been changed." (1/5/21 Michigan Secretary of State, *Michigan's election was secure and fair, and the results are accurate* (Exhibit 63)).

308. Pennsylvania: On November 12, 2020, Governor Tom Wolf tweeted, from his official government account, "Allegations of fraud and illegal activity have been repeatedly debunked. Pennsylvania had a free, fair, and secure election." (11/12/20 Tweet from Governor Tom Wolf (Exhibit 67[16])).

309. On November 13, 2020 Governor Wolf issued the following statement: "All Pennsylvanians can have confidence in our election system and the accuracy of the vote." "The U.S. Department of Homeland Security's conclusion that our nation had the most secure election in history reaffirms the commitment to protecting our votes by local, state and national officials. Allegations of fraud and unfounded rumors of illegal activity have been repeatedly debunked. Those deliberate and false attacks are un-American and harm our democracy, and we should reject them. I thank the election and cyber-security experts for verifying that our nation's

[16] *Available at* https://twitter.com/GovernorTomWolf/status/1327026907884478469.

election was protected and secure." (11/13/20 Governor Tom Wolf: U.*S. Election was 'most secure in American history' Federal Agency says* (Exhibit 68[17])).

310. Arizona: On December 1, 2020, in response to allegations from former President Trump that Arizona's election had been tainted by "corruption," Governor Doug Ducey issued a nine-tweet thread explaining that Arizona's election had been fair and free from fraud. Specifically, he stated: "In Arizona, we have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election." (12/1/20 Tweet from Gov. Doug Ducey (Exhibit 70[18])).

311. Wisconsin: On or about December 16, 2020, Wisconsin's Elections Commission, on its website, answered the question of whether Dominion voting equipment flipped votes from Trump to Biden: "[a]bsolutely not. Twenty-eight reporting units using Dominion systems were randomly selected after the election and audited for the Presidential contest, and all the audits confirmed that the hand-counted paper ballots exactly matched the electronic results from the machines." It also answered the question of whether there was widespread fraud in the 2020 election - saying there was no evidence of such fraud. And it stated that the claims made about Dominion have not been substantiated. (11/16/20 Wisconsin Elections Commission, *Did Dominion Voting Equipment Slip Votes from Trump to Biden* (Exhibit 73)).

312. Nevada: On November 5, 2020, Nevada Governor Steve Sisolak held a press conference, in which he stated: "Nevada is widely recognized as being a leader in election

[17] *Available at* https://www.governor.pa.gov/newsroom/u-s-election-was-most-secure-in-american-history-federal-agency-says/

[18] A*vailable at* https://twitter.com/dougducey/status/1333603735855976450

administration, and I continue to have the utmost confidence in the abilities of Nevada's local election officials and Secretary of State Barbara Cegavske to accurately count every eligible vote cast in the Silver State. Our election administration officials are required to keep counting under state law and that is exactly what they'll do until every vote is counted. Despite national pressure, our election officials and public servants continue to prioritize accuracy and fairness in this process. That should make all Nevadans proud. I ask all Nevadans to support our election workers, trust this process and respect the results when they are certified as final." (11/5/20 Nevada Govenro, *Gov. Sisolak issues statement on President Trump's comments on the election* (Exhibit 75[19])).

313. And Nevada state officials have expressly stated after certification of the election results that there was no evidence of voter fraud. In Secretary of State Barbara Cegavske's "*Facts v. Myths: Nevada 2020 Post-General Election*" document, posted on the Nevada Secretary of State website, the Secretary stated, "we have yet to see any evidence of widespread fraud." (Facts v. Myths: Nevada 2020 Post-General Election (Exhibit 76[20])).

314. In addition, on November 10, 2020, the New York Times reported contacting officials in every state on November 9 and 10, and that officials in all states but Texas reported no major voting issues. (11/10/20 NYT Article, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 126).

315. Fifth, election technology companies issued public statements rejecting claims of fraud or rigging the 2020 U.S. election. For example, on November 7, 2020, Dominion issued a

[19] *Available at* https://gov.nv.gov/News/Press/2020/Governor_Sisolak_issues_statement_on_President_Trump%E2%80%99s_comments_on_the_election/.

[20] A*vailable at* https://www.nvsos.gov/sos/home/showdocument?id=9191.

statement that "[t]here are no credible reports or evidence of any system software errors in Georgia or Michigan." (11/7/20 Dominion Website, *Statement on Viral Claims/Rumors About Dominion Voting Systems* (Exhibit 88)).

316. On November 12, 2020, Dominion's website included a page to set the record straight, including that the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) has debunked claims of voter fraud. It further stated "[n]o credible reports or evidence of any software issues exist. While no election is without isolated issues, Dominion Voting Systems are reliably and accurately counting ballots. State and local officials have publicly confirmed the integrity of the process." (11/1/20 Dominion Website, *Election 2020: Setting the Record Straight* (Exhibit 87); 11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 90); 11/17/20 Dominion Website, *Setting the Record Straight, Facts & Rumors* (Exhibit 91); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts& Rumors* (Exhibit 95)).

3. Defendants knew Smartmatic's election technology and software did not, and does not, send votes cast in the United States to foreign countries.

317. Information was available to Defendants that showed their statements about Smartmatic's election technology and software sending votes cast in the United States to foreign countries were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

318. First, as discussed above, before the disinformation campaign, there was publicly available and easily accessible information that Smartmatic was used in only one county in the 2020 U.S. election, Los Angeles County. This information also made clear that the system Smartmatic provided to Los Angeles county does not count, tabulate, or store votes. The

technology and software used by Smartmatic in the 2020 U.S. election did not count votes, much less send them to a foreign country for counting.

319. Second, there were articles available on Smartmatic's website before and during the disinformation campaign about the use of Smartmatic's technology and software in Los Angeles County (and owned by the county). These articles show that the technology is not connected to the Internet, are not used to count votes, and do not store any data. It is noted that county officials tabulate votes by counting the paper ballots produced by the devices and cast by voters. (11/11/20 Smartmatic Website, *Los Angeles County—Voting Solutions for All People* (Exhibit 128)).

320. Third, as discussed above, on November 19, 2020, it was reported that a spokeswoman for the National Association of Secretaries of State (NASS) said: "Elections in the United States of America are administered, run, counted and certified by state and local election officials. We have never heard of votes being tabulated in a foreign country." (11/19/20 Verify, *No evidence that presidential election votes were tallied overseas* (Exhibit 137)).

321. Fourth, before and during the disinformation campaign, various companies providing election technology issued statements contradicting claims related to votes being sent to foreign countries. (11/13/20 Scytl Website, *Scytl strongly denies the false information related to the U.S. elections* (Exhibit 131[21]); 11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 90); 11/21/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 92); 11/26/20 Dominion Website, *Statement from Dominion on Sidney Powell's Charges* (Exhibit 94); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 95)).

[21] *Available at,* https://www.scytl.com/en/fact-checking-regarding-us-elections-debunking-fake-news/

322. Fifth, it was widely reported and known in November that claims related to votes being sent to foreign countries were false. (11/16/20 Reuters Article, *Fact check: the U.S. military has not seized election servers in Germany* (Exhibit 135); 11/19/20 AP Article, *AP Fact Check: Trump legal team's batch of false vote claims* (Exhibit 138); 11/15/20 AP Article, *False reports claim election servers were seized in Germany* (Exhibit 133)).

4. Defendants knew that Smartmatic's election technology and software were not compromised or hacked during the 2020 U.S. election.

323. Information was available to Defendants that showed their statements about Smartmatic's election technology and software being compromised or hacked during the 2020 U.S. election were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

324. First, as discussed above, before the disinformation campaign, there was publicly available and easily accessible information that Smartmatic's technology and software were used in only one county in the 2020 U.S. election, Los Angeles County. Defendants' statements about compromises and/or hacking for the 2020 U.S. election primarily related to contested states and did not include the one state where Smartmatic's election technology and software were used (California was not contested).

325. Second, before and during the disinformation campaign, there was publicly available information that showed there were no issues in the one county where Smartmatic's election technology and software were used during the 2020 U.S. election, Los Angeles County. Smartmatic and its system came through the 2020 election in that county "with flying colors" as noted by an initial case study made available on its website. There are no reports that Smartmatic's election technology and software had been compromised or hacked. (Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 128); 11/10/20 Los Angeles Times

Article, *L.A.'s $300-million voting systems gets high marks as votes trickle in across California* (Exhibit 127)).

326. There was also information publicly available before the disinformation campaign about the work of Los Angeles County to certify Smartmatic's voting system for use, including descriptions of the state testing and certification process that exceeds the guidelines recommended by the U.S. Elections Assistance Commission (EAC) (and California's standards are also considered the most rigorous in the country). That information showed that every system goes through functional testing, source code review, accessibility and volume testing, and red team security testing that involved experts trying to "break into" the voting system. Smartmatic's system for Los Angeles County passed. (10/1/20 California Secretary of State Press Release, *Los Angeles County Launches VSAP 2.1 Voting System Certified* (Exhibit 50); 12/15/20 California Secretary of State Website, *Voting Technologies Approved for Use in California* (Exhibit 53)).

327. The Smartmatic system that was actually used in the general election for Los Angeles County was VSAP 2.1, which was certified by California in October 2020. California Secretary of State Padilla said in a press release that VSAP was a "historic milestone in election administration" and that the "public design and testing process for VSAP was one of the lengthiest and most inclusive ever conducted for voting technology."[22] Secretary Padilla said that the system underwent functional testing and source code review, among other things, and that California's Voting System Standards exceed the Voluntary Voting System Guidelines recommended by the U.S. Elections Assistance Commission and "are considered the most rigorous in the country." In his October 1, 2020 certification, Secretary Padilla stated that VSAP 2.1 "satisfies the accuracy,

[22] *Available at* https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/ap20091-los-angeles-county-vsap-21-voting-system-certified).

accessibility, usability, and security standards set forth in the California Voting Systems Standards and California law." (10/1/20 California Secretary of State, *Conditional Approval of Los Angeles County's Voting Solutions for All People (VSAP) 2.1 Voting Systems* (Exhibit 51[23])).

328. Third, as discussed above, before and during the disinformation campaign, there was publicly available information that the 2020 U.S. election was secure, and federal and state officials confirmed there was no basis to any claims of hacking. For example:

a. On November 4, 2020, the Director of the Cybersecurity and Infrastructure Security Agency issued a statement that "after millions of Americans voted, we have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies." (11/4/20 Statement from CISA Director Krebs Following Final Day of Voting (Exhibit 125)).

b. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a joint statement that "[t]he November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result." It further stated, "[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised." And "[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission's (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020."

[23] *Available at*, http://votingsystems.cdn.sos.ca.gov/vendors/LAC/vsap2-1/vsap21-cert.pdf

"While we know there are many unfounded claims and opportunities for misinformation about the process of our selections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too." (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Counsel & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 130)).

c. On November 12, 2020, a competitor company's Vice Chair, Sam Derheimer, signed the Joint Statement from the Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees providing that "There is no evidence that any voting system deleted or lost votes, changed votes, or was in any compromised." (11/12/20 Cybersecurity & Infrastrucure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 130)).

d. On December 1, 2020, Attorney General Barr specifically addressed Defendants claims about Smartmatic and Dominion in an interview with the Associated Press: "There's been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven't seen anything to substantiate that." (12/1/20 AP Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 142)).

329. Fourth, there was publicly available information by government officials that have authority over the election process about procedures and processes to test and certify any election technology used, including for the 2020 U.S. election. The information clearly shows various and rigorous testing and certification processes to prevent hacking or any compromise to the voting systems during the election. (CISA, #Protect2020 Rumor vs. Reality (Exhibit 147[24])).

330. Fifth, before and during the disinformation campaign, Smartmatic's website indicated that its technology had been validated by institutions such as the Carter Center, the United Nations, the Organization of American States, and the European Union. Smartmatic also provided information that its election software had processed more than 5 billion votes over 20 years without a breach. (11/27/20 Smartmatic Website, *Fact-checked* (Exhibit 85)).

5. Defendants knew that Smartmatic's election technology and software were not used by Dominion during the 2020 U.S. election.

331. Information was available to Defendants that showed their statements about Smartmatic's election technology and software being used by Dominion in the 2020 U.S. election were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

332. First, before and during the disinformation campaign, there was publicly available and easily accessible information that shows Smartmatic and Dominion are two separate companies.

333. For example, the state filings for both companies, Smartmatic and Dominion, shows that they are two separate companies. (3/30/20 Smartmatic USA Corp Annual Report filed

[24] *Available at* https://www.cisa.gov/rumorcontrol.

with Florida Secretary of State (Exhibit 117[25]); 6/25/10 Dominion Voting Systems, Inc. Statement of Foreign Entity Authority filed with Colorado Secretary of State (Exhibit 102[26])).

334. There was also litigation between the companies and the public filings clearly establish the companies are separate, they are competitors, and that their technology is separate. (9/18/12 Smartmatic Press Release, *Smartmatic International Sues Dominion Voting Systems for Licensing Breach and Improper Business Practices* (Exhibit 104); 5/1/13 Mem. Opinion In *Smartmatic Int'l Corp. v. Dominion Voting Systems Int'l Corp.*, no. 7844-VCP (Del. Chan.) (Exhibit 106[27])).

335. Second**,** as discussed above, before and during the disinformation campaign, there was publicly available and easily accessible information that Smartmatic's election technology and software were used in only one county in the 2020 U.S. election, Los Angeles County. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Smartmatic/Los Angeles County*, Exhibit 151)).

336. Smartmatic's own website also had information that made clear that Smartmatic had no ties to Dominion Voting Systems - no ownership ties, no software leasing, and no business at all between the two companies. It further noted that in 2009, Smartmatic licensed scanning machines from Dominion for use in the Philippines for a Smartmatic election project, which was the only contract with Dominion, that it was short-lived, and ended in a lawsuit. It further noted

[25] *Available at* http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=forp-f12000002926-35de48ca-c44d-47cf-bc3f-7c7c97626ee5&transactionId=f12000002926-a9e78686-735e-4266-849b-575d71eb1604&formatType=PDF.

[26] *Available at* https://www.sos.state.co.us/biz/ViewImage.do?masterFileId=20101359683&fileId=2010135963,

[27] Available at https://law.justia.com/cases/delaware/court-of-chancery/2013/ca-7844-vcp.html

that that was the first and last time that Smartmatic and Dominion tried to do business together. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

337. Third, Dominion's website similarly provided information that made clear it was a distinctly separate company from, and fierce competitor to Smartmatic, and not using Smartmatic's election technology and software. (11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 90); 11/17/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 91); 11/25/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 93); 11/26/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 94); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 95)).

338. Fourth**,** before and during the disinformation campaign, there was publicly available and easily accessible information related to the election technology used in each county and state that showed the specific systems and technology and software used in such county and state, along with the manufacturers identity. This information showed that Smartmatic's technology and software were not used by Dominion in the 2020 U.S. election.

339. For example, Verified Voting (http://www.verifiedvoting.org) keeps a running map of all voting equipment in the United States, broken down by county. It separates voting equipment into three categories—hand marked paper ballots, ballot marking devices (BMDs) and systems, and direct recording electronic (DRE) systems. It identifies for each county in every state the polling place equipment, including the type of equipment used, the make, and the model. Any company that makes the equipment used is identified. The specific technology and software used by Dominion in the 2020 U.S. election can be found and is described in detail for each county.

(Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Dominion Voting Systems* (Exhibit 152)).

6. Defendants knew that Smartmatic had not been banned in the United States (or any individual state).

340. Information was available to Defendants that showed their statements about Smartmatic being banned in the United States (or any individual state) were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

341. First, as discussed above, before the disinformation campaign, there was publicly available and easily accessible information that showed Smartmatic's technology and software was used in one county in the 2020 U.S. election, Los Angeles County. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Smartmatic/Los Angeles County* (Exhibit 151)). Los Angeles County would not have been able to use Smartmatic for the 2020 U.S. election if it had been banned from use. For example:

a. On June 13, 2018, Los Angeles County entered into a contract with Smartmatic as the contractor for the County's "Voting Solutions for All People" ("VSAP") voting technology. (7/2/18 Registrar-Recorder/County Clerk signs contract with Smartmatic USA (Exhibit 49[28])).

b. Los Angeles County used VSAP as its voting technology in the November 2020 general election. (10/15/20 Voting Technologies in Use by County (Exhibit 52[29])).

[28] *Available at* https://vsap.lavote.net/2018/07/02/registrar-recorder-county-clerk-signs-contract-with-smartmatic-usa/.

[29] *Available at* https://votingsystems.cdn.sos.ca.gov/oversight/county-vsys/vot-tech-by-counties-2020-11.pdf,

c. California's Secretary of State adopted testing standards that met or exceeded the federal ones set by the EAC. (California Voting System Standards at 5 (Exhibit 48[30])).

342. Second, before the disinformation campaign, there was publicly available information, including on Smartmatic's own website, that showed its election technology and software were used in the state of Utah for the 2016 Republican Presidential Caucus. Again, this would not have been the case if it had been banned.

343. Third, before and during the disinformation campaign, it was publicly known that Smartmatic was a member of the Government Facilities Sector, Government Coordinating Council, Election Infrastructure Subsector, along with 39 other members and a government coordinating council. (Government Facilities Sector – Election Infrastructure Subsector: Charters and Membership List (Exhibit 148[31])). Smartmatic would not have been allowed to participate if it had been banned from the United States, given that it was formed as part of the Department of Homeland Security's ongoing work to build trusted relationships across private and public sectors to help keep the nation's election systems secure. (12/14/17 Department of Homeland Security Press Release, *DHS and EAC Meet with Election Industry Members to Launch Sector Coordinating Council* (Exhibit 108)).

344. Fourth, before the disinformation campaign, there was publicly available information that contradicted statements that Smartmatic was denied use in the State of Texas. Texas publicly identified on the website of its Secretary of State that it employed election systems from three companies: (1) Dominion, (2) ES&S, and (3) Hart InterCivic. There was also

[30] *Available at* https://admin.cdn.sos.ca.gov/regulations/elections/california-voting-system-standards.pdf

[31] *Available at* http:www/cisa.gov/government-facilities-election-infrastructure-charters-and-memberships.

information publicly available that showed that it was Dominion - not Smartmatic - that had previously had issues with the State of Texas, but regardless, any issues had been resolved by the State of Texas since it selected and certified Dominion as one of its voting systems. (VoteTexas.gov, *How to Vote* (Exhibit 149[32]); Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 150[33])).

345. Fifth, before and during the disinformation campaign, there was publicly available information that before use in elections, voting systems undergo hardware and software testing to ensure they are consistent with state and/or federal requirements. Under these programs, voting system manufacturers submit their systems to undergo testing and review by an accredited laboratory or state testers. This testing checks if systems function as designed and meet applicable state and/or federal requirements or standards for accuracy, privacy, and accessibility. Certification testing usually includes a review of a system's source code as well as environmental, security, and functional testing. (CISA, *#Protect2020 Rumor vs. Reality* (Exhibit 147)). A company banned in the United States would not meet these requirements.

7. Defendants knew that Smartmatic was not a Venezuelan company and that corrupt dictators did not control Smartmatic.

346. Information was available to Defendants that showed their statements about Smartmatic being a Venezuelan company and being controlled by corrupt dictators were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

347. First, before and during the disinformation campaign, information about the corporate status of Smartmatic was publicly available and easy to confirm from state and other

[32] *Available at* https://www.votetexas.gov/voting/how.html.

[33] *Available at* https://www.sos.texas.gov/elections/laws/dominion.shtml

public filings. It was founded and maintains its base office in Boca Raton, Florida. Indeed, its filing with the Florida Secretary of State identifies that it is incorporated in Delaware and has a business address in Boca Raton, Florida. (7/13/12 Florida Division of Corporations Smartmatic USA Corp Filing Record, Exhibit 101)).

348. Second, before and during the disinformation campaign, information about the corporate status of Smartmatic was publicly available from its website. Its website notes it is a U.S. company, regardless of where its founders or shareholders happened to be born. It states that it has no ties to governments or political parties - no alliances, relationships or "deals" with any politician, political organization, or government. It also states that its founders adhere to a strict ethics code that prohibits them from making political donations. (11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 83); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

349. Third, before and during the disinformation campaign, information about Smartmatic's history with Venezuela was publicly available from its website and other sources. The company was founded by three engineers from Venezuela. And the company has made public statements that they do not have any ties to Venezuela or Hugo. (10/30/06 Fox News Article, *Voting Machines Cos: No Ties to Chávez* (Exhibit 101)).

350. In fact, a March 2020 Politico article referenced in one of Fox News's broadcasts by Mr. Dobbs indicated that Smartmatic never had ties to the Venezuelan government (but simply supplied voting machines used in elections there) and that there is no ownership by the Venezuelan government in the company. (3/3/20 Politico Article, *Los Angeles Voting Experiment* (Exhibit 117)).

351. Fourth, before and during the disinformation campaign, information about Smartmatic's participation in election projects in Venezuela was publicly and widely known.

Smartmatic did elections there from 2004 to 2017, but stopped its work there after blowing the whistle on false reporting for the 2017 election. Indeed, its technology helped prove the government was reporting false turnout numbers. (3/6/18 Business Wire Article, *Smartmatic Announces Cease of Operations in Venezuela* (Exhibit 109); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

8. Defendants knew Smartmatic's election technology has not been designed and used to fix, rig, or steal elections.

352. Information was available to Defendants that showed their statements about Smartmatic's election technology and software being designed and used to fix, rig, or steal elections were false. Defendants either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

353. First, before and during the disinformation campaign, information about audited elections that Smartmatic participated in, all over the world, was publicly available, and such information does not support statements that it has been used to fix, rig, or steal elections.

354. Second**,** before and during the disinformation campaign, information about the success and security of Smartmatic's election technology and software was publicly available from its website. For example, its website stated that its election technology had handled billions of votes in election projects on five continents, without a single discrepancy and has never been compromised. Its election technology and software were designed to ensure secure, transparent, and auditable elections (and not to change votes or rig elections). (Smartmatic Website, *Facts About Smartmatic* (Exhibit 86)).

355. There was publicly available information at the time of the disinformation campaign to show that third-party validators had authenticated Smartmatic's technology, including the State of California, PriceWaterhouseCoopers, and the U.S. Election Assistance Commission.

The United Nations, Organization of American States, and the European Union have also validated Smartmatic's technology. Former U.S. President Jimmy Carter of the Carter Center has called Smartmatic's electronic voting solution in Venezuela "the best in the world." (9/21/12 Smartmatic Press Release, *Carter States that Election Process in Venezuela is "Best in the World"* (Exhibit 105); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

356. Third, as discussed above, before and during the disinformation campaign, information about the certification of Smartmatic's election technology for Los Angeles County and Smartmatic's registration with the U.S. Election Assistance Commission was publicly available.

357. Fourth, before and during the disinformation campaign, information was publicly available that showed Smartmatic had been approved as a Department of Defense vendor and a founding member of the Department of Homeland Security Election Infrastructure Sector Coordinating Council.

C. Fox Defendants had obvious reasons to doubt the veracity of Mr. Giuliani and Ms. Powell.

358. The Fox Defendants published statements made by Mr. Giuliani and Ms. Powell regarding Smartmatic's role in the 2020 U.S. election; Smartmatic's ownership, founding and funding; and its election technology and software. The Fox Defendants had obvious reasons to doubt the veracity of Mr. Giuliani and Ms. Powell, and, on information and belief, the Fox Defendants doubted the veracity of Mr. Giuliani and Ms. Powell.

359. First, Mr. Giuliani and Ms. Powell did not provide the Fox Defendants credible support for their statements and implications regarding Smartmatic. Mr. Giuliani and Ms. Powell did not introduce the Fox Defendants to any person with firsthand knowledge of the claims they made about Smartmatic. Nor did Mr. Giuliani and Ms. Powell identify for the Fox Defendants a

person with firsthand knowledge of the claims they made about Smartmatic. On information and belief, the Fox Defendants would have published an interview of someone with firsthand knowledge if that person existed.

360. Mr. Giuliani and Ms. Powell also did not provide the Fox Defendants with any documentation showing (a) Smartmatic's election technology and software were widely used during the 2020 U.S. election, (b) Dominion used Smartmatic's election technology and software during the 2020 U.S. election, (c) Smartmatic's election technology and software changed or altered votes during the 2020 U.S. election, (d) Smartmatic's election technology and software sent votes to foreign countries during the 2020 U.S. election, (e) Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election, or (f) Smartmatic had previously been banned from being used in the United States.

361. Second, the Fox Defendants were not able to independently corroborate the statements being made about Smartmatic by Mr. Giuliani and Ms. Powell. The Fox Defendants had over a month to identify a source corroborating the statements and implications made by Mr. Giuliani and Ms. Powell. Instead of identifying a source corroborating Mr. Giuliani and Ms. Powell, the Fox Defendants published Mr. Perez's interview in which he acknowledged the absence of evidence to support what Mr. Giuliani and Ms. Powell had stated.

362. For example, Mr. Giuliani and Ms. Powell made statements regarding Dominion owning Smartmatic and Smartmatic owning Dominion. The falsity of those statements is readily apparent from the publicly available information provided to the State of Georgia, which showed their respective ownership structures. The falsity of the statements was confirmed by Dominion and Smartmatic in public statements on November 17. The Fox Defendants never corroborated

Mr. Giuliani's and Ms. Powell's claim to the contrary, which undercut Mr. Giuliani's and Ms. Powell's reliability across the board.

363. Third, the Fox Defendants knew that credible sources, with firsthand knowledge, had contradicted the statements being made by Mr. Giuliani and Ms. Powell. During the disinformation campaign, the Fox Defendants were aware that Smartmatic had published statements contradicting what was being said by Mr. Giuliani and Ms. Powell, including contradicting the claim that Smartmatic was widely used during the 2020 U.S. election or used by Dominion during the 2020 U.S. election.

364. During the disinformation campaign, the Fox Defendants were aware that Dominion had published statements contradicting what was being said by Mr. Giuliani and Ms. Powell, including contradicting the claim that Smartmatic's election technology or software was used by Dominion during the 2020 U.S. election.

365. During the disinformation campaign, the Fox Defendants were aware that government officials and agencies published statements contradicting what was being said by Mr. Giuliani and Ms. Powell. Many of those statements are discussed above. Among other things, the Fox Defendants were aware or should have been aware of the following statements that contradicted Mr. Giuliani and Ms. Powell's claim that Smartmatic had fixed, rigged, or stolen the 2020 U.S. election:

a. November 4: Cybersecurity and Infrastructure Security Agency Christopher Krebs issued a statement: "[W]e have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies." (11/4/20 Cybersecurity & Infrastructure Security Agency, *Statement from CISA Director Krebs Following Final Days of Voting* (Exhibit 125)).

b. November 10: New York Times reported contacting officials in every state on November 9 and 10, and that officials in all states but Texas reported no illegal voting or major voting issues. (11/10/20 New York Times Article, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 126)).

c. November 12: The Elections Infrastructure Government Coordinating Council Executive Committee and the Election Infrastructure Sector Coordinating Council issued a joint statement: "The November 3rd election was the most secure in American history ... There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised." (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* (Exhibit 130)).

d. December 1: Attorney General William Barr said in an interview: "There's been one assertion that would be systematic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven't seen anything to substantiate that." (12/1/20 Associated Press Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 142)).

366. Fourth, the Fox Defendants were aware or should have been aware that the election officials in Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin did not support and contradicted the statements being made by Mr. Giuliani and Ms. Powell regarding the security

of the elections in their States and votes being changed by election technology or software. Each of the States provided updates during the disinformation campaign. None corroborated the statements being made by Mr. Giuliani and Ms. Powell.

367. Fifth, the Fox Defendants were aware or should have been aware that Mr. Giuliani's and Ms. Powell's statements about Smartmatic's election technology and services being used by Dominion were contradicted by the testing conducted by the U.S. Election Assistance Commission. The U.S. Election Assistance Commission has a testing program that EAC-certified machines must pass before being used for elections.

> Before voting machines and election management systems are used in elections, the systems undergo rigorous hardware and software testing by laboratories accredited by the EAC and the National Institutes of Standards and Technology (NIST). The testing encompasses security, accuracy, functionality, accessibility, usability, and privacy based on requirements in the EAC's Voluntary Voting System Guidelines (VVSG).

(U.S. Election Assistance Commission Website, *How the U.S. Election Assistance Commission Facilitates Fair and Secure Elections* (Exhibit 143)).

368. The Fox Defendants knew or should have known that any election technology or software that was certified by the EAC and used in the 2020 U.S. election had been tested for "security, accuracy, functionality, accessibility, usability, and privacy." Mr. Giuliani's and Ms. Powell's statements regarding Smartmatic's software cannot be reconciled with this certification.

369. Sixth, the Fox Defendants knew or should have known that their own election technology specialists contradicted what Mr. Giuliani and Ms. Powell said about Smartmatic's software being used by Dominion to switch or alter votes. For example, Eddie Perez was interviewed by the New York Times on November 11. 11/11/20 NYT Article, *No, Dominion voting machines did not delete Trump votes* (Exhibit 129)). On November 11, the New York Times quoted Mr. Perez as saying:

> Many of the claims being asserted about Dominion and questionable voting technology is misinformation at best and, in many cases, they're outright disinformation.
>
> ***
>
> I'm not aware of any evidence of specific things or defects in Dominion software that would lead one to believe that votes had been recorded or counted incorrectly.

370. Mr. Perez was not the only one. On November 16, election security specialists issued a statement addressing claims that election technology and software had been manipulated to rig the 2020 U.S. election. (11/16/20, Letter from Election Security Specialists (Exhibit 134)). The statement read:

> We are aware of alarming assertions being made that the 2020 election was "rigged" by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent. To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.

371. The Fox Defendants knew or should have known that election security specialists debunked the statements being made by Mr. Giuliani and Ms. Powell regarding Smartmatic's election technology and software fixing, rigging, or stealing the election. Based on information readily available to the Fox Defendants, they knew or should have known that Mr. Giuliani and Ms. Powell's statements about Smartmatic's election technology and software changing or stealing votes were unsubstantiated and technically incoherent.

372. The Fox Defendants considered Mr. Perez to be a credible enough source to put him on three programs on December 18 and December 20. The source that the Fox Defendants considered credible contradicted Mr. Giuliani's and Ms. Powell's statements.

373. Seventh, the Fox Defendants knew that Mr. Giuliani's and Ms. Powell's statements regarding an election fraud involving Smartmatic were inconsistent with statements made by attorneys in court. For example:

a. November 17: Mr. Giuliani appeared for the plaintiff in *Donald J. Trump for President, Inc. vs. Boockvar*, filed in Pennsylvania. This was the only election related case in which Mr. Giuliani appeared before a court. During the hearing, Mr. Giuliani stated: "This is not a fraud case." (11/20/20 New York Times Article, *Trump Campaign Lawyers Step Up but Are Swiftly Knocked Down* (Exhibit 139)).

b. November 11: Johnathan Goldstein appeared for the plaintiff in *Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*, filed in Pennsylvania. During the hearing, Mr. Goldstein stated: "I am not calling the Board of the DNC or anybody else involved in this a liar. Everybody is coming to this with good faith." *Id.*

c. November 12: Kory Langhofer appeared for the plaintiff in *Donald J. Trump for President, Inc. v. Hobbs*, filed in Arizona. During the hearing, Mr. Langhfoer stated: "This is not a fraud case." *Id.*

374. The statements made by attorneys in court were not consistent with Mr. Giuliani's and Ms. Powell's claim that Smartmatic had perpetrated a "fraud" by fixing, rigging, and stealing the 2020 U.S. election. The Fox Defendants knew or should have known that Mr. Giuliani and Ms. Powell lacked credibility based on the fact that lawyers representing President Trump contradicted their statements.

375. Eighth, the Fox Defendants knew that Ms. Powell's claims of unleashing "the Kraken" in a lawsuit was sham.[34] The Trump Campaign publicly distanced themselves from Ms. Powell on November 22. They issued the following statement: "Sidney Powell is practicing law on her own. She is not a member of the Trump Legal Team. She is also not a lawyer for the President in her personal capacity." (Twitter, @JennaEllisEsq., November 22, 2020 (Exhibit 140)).

376. The Fox Defendants knew that Ms. Powell had not filed any lawsuits on behalf of the Trump Campaign or otherwise at the time that the Trump Campaign publicly distanced itself and President Trump from Ms. Powell. Ms. Powell's failure to file any lawsuits consistent with the statements that she and Mr. Giuliani had made about Smartmatic gave or should have given the Fox Defendants additional reasons to doubt their credibility.

377. The lawsuits that Ms. Powell eventually filed were shams as they relate to Smartmatic. Ms. Powell's lawsuits were telling for what they did not include:

a. The lawsuits had no affidavit or statement by any Smartmatic or Dominion employee admitting using election technology or software to alter votes in the 2020 elections.

b. The lawsuits had no affidavit or statement by anyone who claimed personal knowledge that Smartmatic had done anything to fix, rig, or steal the 2020 U.S. election.

c. The lawsuits had no affidavit or statement by anyone familiar with the election technology and software that Smartmatic used in the 2020 U.S. election.

[34] Ms. Powell described her pending lawsuit(s) as the "Kraken." The Kraken is a mythical sea creature of enormous size.

d. The lawsuits had no affidavit or statement by any current or former Smartmatic employee that the company's election technology and software were designed to fix, rig, or steal elections.

e. The lawsuits had no allegations or support for the notion that Smartmatic was using the same election technology and software in 2020 in the United States as had been used on Venezuelan elections years earlier.

f. The lawsuits had no allegations or support for the notion that state or county election officials had committed fraud in the 2020 U.S. election.

378. Ms. Powell and Mr. Giuliani told the Fox Defendants that Smartmatic's election technology and software had been widely used in the 2020 U.S. election and had been used to fix, rig, and steal the election for Joe Biden and Kamala Harris. But when Ms. Powell filed her lawsuits, she could not make or substantiate the claims. The Fox Defendants knew or should have known based on the lawsuits that Ms. Powell filed that Ms. Powell and Mr. Giuliani could not substantiate their claims about Smartmatic.

D. Ms. Powell filed sham lawsuits with unsubstantiated and gratuitous allegations about Smartmatic.

379. Ms. Powell is a lawyer. She understood the legal exposure that accompanied making defamatory and disparaging statements about Smartmatic. With that understanding, Ms. Powell sought to hedge her bets by mentioning Smartmatic in four lawsuits filed after the Trump Campaign and President Trump publicly distanced her from their legal strategy. On information and belief, the allegations she made about Smartmatic in those lawsuits were cover for her disinformation campaign against Smartmatic. The allegations made about Smartmatic were not in good faith.

1. Ms. Powell filed the lawsuits in bad faith.

380. Ms. Powell filed four lawsuits containing accusations about Smartmatic: *Pearson v. Kemp*, No. 20-cv-4809 (N.D. Ga., filed on November 25, 2020); *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich., filed on November 25, 2020); *Feehan v. Wisconsin Elections Commission*, No. 20-cv-1771 (E.D. Wis., filed on December 1, 2020); and *Bowyer v. Ducey*, No. 02-cv-02321 (D. Ariz., filed on December 2, 2020).

381. Ms. Powell filed each of these four lawsuits in bad faith, knowing that the plaintiffs she represented lacked standing, were barred from bringing claims against state officials under the Eleventh Amendment, were precluded by the equitable doctrine of laches from filing the complaints, brought claims that already had been rendered moot, and failed to state a claim.

382. Of the four lawsuits brought by Powell, all resulted in immediate dismissals for the very reasons Powell knew these suits were shams: lack of standing, Eleventh Amendment immunity, laches, mootness, and failure to state a claim, among other reasons. *Pearson*, 20-cv-4809 (Dkt. No. 74, Dec. 7, 2020); *King*, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020); *Feehan*, -- F. Supp. 3d --, 2020 WL 7250129 (E.D. Wis. Dec. 9, 2020); *Bowyer*, -- F. Supp. 3d --, 2020 WL 7238261 (D. Ariz. Dec. 9, 2020).

383. Of those dismissals, three courts issued written opinions emphasizing the bad faith in which the lawsuits had been filed: *King*, *Feehan*, and *Bowyer.* First, all three courts expressly criticized the complaints themselves for their specious allegations and ulterior motives:

a. The *Bowyer* court stated: "Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election." (2020 WL 7238262, at *16).

b. The *King* court noted: "[T]his lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this

Court—and more about the impact of their allegations on People's faith in the democratic process and their trust in our government." (2020 WL 7134198, at *13).

c. The *Feehan* court made two such proclamations. First, "Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so." (2020 WL 72590129, at *1). Second, "The plaintiff wants Donald J. Trump to be certified as the winner of the Wisconsin election as a result of the plaintiff's vote. But what he asks is for Donald J. Trump to be certified the winner as a result of judicial fiat." (*Id*. at *10).

384. Second, the courts emphasized the lack of factual support for the claims at issue. The *Bowyer* court found:

a. "[T]he Complaint's allegations are sorely wanting of relevant or reliable evidence...." (2020 WL 7238261, at *1).

b. "Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections." (*Id*. at *13).

c. "The Complaint is equally void of plausible allegations that Dominion voting machines were actually hacked or compromised in Arizona during the 2020 General Election ... These concerns and stated vulnerabilities, however, do not sufficiently allege that any voting machine used in Arizona was in fact hacked or compromised in the 2020 General Election. Rather,

what is present is a lengthy collection of phrases beginning with the words 'could have, possibly, might,' and 'may have.'" (*Id*. at 15).

d. "Plaintiffs face serious jurisdictional impediments in bringing their claims to federal court at the eleventh hour. These insurmountable legal hurdles are exacerbated by insufficiently plead [sic] allegations of fraud, rendered implausible by the multiple inadmissible affidavits, declarations, and expert reports upon which their Complaint relies." (*Id*.).

385. The *King* court likewise rejected plaintiffs' equal protection claim for lack of evidence: "The closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were possible....With nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fails." (2020 WL 7134198, at *12).

386. Third, two of the courts gave significant weight to the plaintiffs' delay in filing the lawsuits. The delay in filing the lawsuits is inconsistent with pressing a valid legal claim. Ms. Powell's delay, however, is consistent with seeking to use litigation as a cover for her disinformation campaign against Smartmatic.

387. On the issue of delay, the *King* court stated:

> If Plaintiffs had legitimate claims regarding whether the treatment of election challengers complied with state law, they could have brought their claims well in advance of or on Election Day - but they did not ... If Plaintiffs had legitimate claims regarding the manner by which ballots were processed and tabulated on or after Election Day, they could have brought the instant action on Election Day or during the weeks of canvassing that followed - yet they did not ... If Plaintiffs had legitimate concerns about the election machines and software, they could have filed this lawsuit well before the 2020 General Election - yet they sat back and did nothing ... Plaintiffs proffer no persuasive explanation as to why they waited so long to file this suit ... Indeed, where

there is no reasonable explanation, there can be no true justification." (2020 WL 7134198, at *7).

388. The *Bowyer* court similarly noted: "Plaintiffs' Complaint includes a hodge-podge of alleged misconduct by Arizona elections officials, occurring on various dates over the past weeks, months, and even years ... Plaintiffs offer no reasonable explanation why their claims were brought in federal court at this late date." (2020 WL 7238261, at *10).

389. Fourth, the courts focused on the mootness of the plaintiffs' claims, emphasizing repeatedly that the relief sought could not be granted because it required enjoining actions that already had occurred.

a. The *King* court: "This case represents well the phrase: 'this ship has sailed.' The time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court. For those reasons, this matter is moot." (2020 WL 7134198, at *5).

b. The *Feehan* court: "The plaintiff asks the court to prohibit from occurring an event that has already occurred—an event that occurred the day before he filed this lawsuit and nine days before the court issues this order. He asks the court to enjoin defendant Evers from transmitting the certified election results—an event that already has occurred. He asks the court to order that certain votes not be counted, when the vote counting has been over since November 29." (2020 WL 7250219, at *13).

c. The *Bowyer* court: "Because this Court cannot de-certify the results [of the Arizona election], it would be meaningless to grant Plaintiffs any of the remaining relief they seek." (*Id.* at *12).

390. The flaws of Ms. Powell's lawsuits were readily apparent and known to Ms. Powell when she filed the lawsuits. Ms. Powell must have known when the lawsuits were filed that they would not and could not succeed in their requested relief. The filing of the lawsuits was, however, consistent with her fundraising efforts and disinformation campaign. Ms. Powell could not continue to solicit funds from supporters of President Trump for a legal defense without filing litigation.

2. Ms. Powell included irrelevant and gratuitous allegations about Smartmatic in her lawsuits.

391. In the four lawsuits filed by Ms. Powell, none of them reference Smartmatic for anything other than gratuitous and false background allegations. Not one of the four complaints references Smartmatic in any of the claims, and not one references Smartmatic in connection with the 2020 U.S. election or anything connected or related to the 2020 U.S. election. (*Pearson*, Dkt. No. 1; *King*, Dkt. No. 1; *Feehan*, Dkt. No. 1; and *Bowyer*, Dkt. No. 1). Ms. Powell did not include allegations about Smartmatic in these lawsuits because Smartmatic was actually pertinent to the claims. On information and belief, Ms. Powell included allegations about Smartmatic in the lawsuits to try to create cover for the disinformation campaign.

392. The allegations that Ms. Powell included in the complaints were not related to the primary theme of the disinformation campaign: that Smartmatic's election technology and software were widely used in the 2020 U.S. election and fixed, rigged and stole the election for Joe Biden and Kamala Harris. Instead, Ms. Powell's lawsuits include allegations that: (a) purport to describe Smartmatic's ties to Venezuela and other foreign countries, (b) reference a 2004 election in Venezuela in which Smartmatic's election technology and software were allegedly used to rig the election, and (c) reference a letter written by a Congresswoman in 2006 requesting an

investigation of Smartmatic based solely on its "foreign ownership" and acquisition of Sequoia – a company Smartmatic sold in 2007.

393. None of the allegations that Ms. Powell made about Smartmatic in the lawsuits relate to the primary messages that the Defendants spread as part of the disinformation campaign; namely, that (a) Smartmatic's election technology and software were widely used in the 2020 U.S. election; (b) Dominion used Smartmatic's election technology and software in the 2020 U.S. election; (c) Smartmatic's election technology and software fixed, rigged and stole the 2020 U.S. election; (d) Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election; (e) Smartmatic's election technology and software sent votes overseas during the 2020 U.S. election; and (f) Smartmatic had been previously banned from providing election technology and software in the United States.

394. Moreover, none of the allegations that Ms. Powell included in her lawsuits were relevant or pertinent to the claims brought in the lawsuits. The allegations about Smartmatic were gratuitous. For example, in *Pearson* the plaintiffs brought the following claims:

a. Plaintiffs claimed violations of the Elections Clause of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to any election technology and software.

b. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of equal protection regarding "invalid enactment of regulations affecting observation and monitoring of the election." The alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process related to "disparate treatment of absentee/mail-in voters among different counties." The alleged violations were unrelated to election technology and software.

d. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were unrelated to election technology and software.

e. Plaintiffs claimed "wide-spread ballot fraud." The alleged fraud was based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

395. The same is true for the claims brought in *King*. The allegations about Smartmatic that were included in the complaint were unrelated to the relief being sought or the violations allegedly giving rise to the relief being sought. The *King* plaintiffs brought the following claims:

a. Plaintiffs claimed violations of the Elections and Electors Clauses of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to election technology and software.

b. Plaintiffs claimed violations of the Fourteenth Amendment and § 42 U.S.C. 1983 based on denial of equal protection regarding "invalid enactment of regulations affecting observation and monitoring of the election." The alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were unrelated to election technology and software.

d. Plaintiffs claimed "wide-spread ballot fraud." The alleged fraud was unrelated to election technology and software.

e. Plaintiffs claimed violations of Michigan statutory election laws. The alleged violations were unrelated to election technology and software.

396. The *Feehan* lawsuit followed the same pattern. None of the violations alleged were tied to the allegations about Smartmatic. None of the relief requested was related to the allegations about Smartmatic. The plaintiffs in *Feehan* made the following claims:

a. Plaintiffs claimed violations of the Elections and Electors Clauses of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to election technology and software.

b. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process related to "invalid enactment of regulations and disparate treatment of absentee vs. mail-in ballots." The alleged violations were unrelated to election technology and software.

c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

d. Plaintiffs claimed "wide-spread ballot fraud." The alleged fraud was unrelated to election technology and software.

397. Finally, none of the claims in *Bowyer* related to the allegations that Ms. Powell included in the complaints about Smartmatic. The allegations about Smartmatic in *Bowyer* were irrelevant to the requested relief and claims. The plaintiffs in *Bowyer* raised the following claims:

a. Plaintiffs claimed violations of the Elections and Electors Clauses of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to election technology and software.

b. Plaintiffs claimed violations of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. 1983. The alleged violations were unrelated to election technology and software.

c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

d. Plaintiffs claimed "wide-spread ballot fraud." The alleged fraud was unrelated to election technology and software.

398. The gratuitousness of Ms. Powell's allegations about Smartmatic was confirmed in the court rulings dismissing each of these claims. *See Pearson*, 20-cv-4809 (Dkt. No. 74, Dec. 7, 2020); *King*, 2020 WL 7134198 (E.D. Mich. Dec. 7, 2020); *Feehan*, -- F. Supp. 3d --, 2020 WL 7250129 (E.D. Wis. Dec. 9, 2020); *Bowyer*, -- F. Supp. 3d --, 2020 WL 7238261 (D. Ariz. Dec. 9,

2020). Not one of the rulings mentions Smartmatic by name or specifically addresses the allegations that Ms. Powell included in the complaints about Smartmatic.

399. Ms. Powell knew when she filed these complaints that the allegations regarding Smartmatic had nothing to do with the claims brought against the named defendants in each case. Ms. Powell spent a month telling people that Smartmatic had perpetrated a massive election fraud by using its election technology and software to steal the 2020 U.S. election. However, in her lawsuits, including the ones discussing "wide-spread ballot fraud," Ms. Powell never alleged that Smartmatic participated in that fraud. Nor were any of her allegations about Smartmatic relevant to the claims.

400. The Fox Defendants were aware of these lawsuits. They were therefore aware that none of Ms. Powell's lawsuits included allegations about Smartmatic similar to the statements that she and the other Defendants had made about Smartmatic during the disinformation campaign. They also knew that none of the claims brought by Ms. Powell related to alleged misconduct by Smartmatic. Nonetheless, the Fox Defendants did not distance themselves from Ms. Powell after she filed the lawsuits. Mr. Dobbs, for example, featured her in yet another broadcast on December 10.

3. Ms. Powell had obvious reasons to doubt the credibility of the "witnesses" she used in the lawsuits.

401. Ms. Powell attached a declaration, a statement, and an affidavit mentioning Smartmatic in some of the complaints she filed. Ms. Powell attached an anonymous declaration to four of the lawsuits (the "Anonymous Declaration"). Ms. Powell attached a statement by Ana Mercedes Díaz Cardozo to four of the lawsuits (the "Cardozo Statement"). Ms. Powell attached an affidavit by Juan Carlos Cobucci to one of the lawsuits (the "Cobucci Affidavit"). Ms. Powell knew or had obvious reasons to doubt the veracity of the declaration/statements.

402. ***Anonymous Declaration*:** Ms. Powell knew the Anonymous Declaration was not reliable and/or had obvious reasons to doubt the veracity of the Anonymous Declaration. First, the declaration makes an impossible claim. The declarant claims to have been present at discussions in or after February 2009 in which Hugo Chávez offered to pay Smartmatic to create or modify its voting system to rig elections, and then the declarant claims that he "closely observed" this system rig an election three years earlier, in 2006. This is clearly impossible absent the invention of time travel.

403. Second, the declaration contradicts Ms. Powell's own statements about Smartmatic. Ms. Powell stated during the Fox programs that Smartmatic was formed in 2004 to fix and rig elections for Hugo Chávez. The declarant, however, states that Mr. Chávez met with Smartmatic in or after February 2009 to discuss fixing elections. Smartmatic could not have been formed in 2004 to fix elections for Mr. Chávez – as Ms. Powell stated – if Smartmatic did not meet with Mr. Chávez until 2009 (again, subject to the invention of time travel).

404. Third, the declaration makes claims that go well beyond his/her/its professed personal knowledge and expertise. The declarant claims to have been a military officer in Venezuela. He then declares:

> [T]he software and fundamental design of the electronic electoral system and software of Dominion and other election tabulating companies relies upon software that is a descendant of the Smartmatic Electoral Management System. In short, the Smartmatic software is in the DNA of every vote tabulating company's software and system.

405. This is beyond a leap of faith. The declarant claims no technical expertise. The declarant claims no relationship or firsthand knowledge of every "election tabulating compan[y]" in the world. He/she/it does not even claim a relationship or firsthand knowledge of Dominion. He/she/it does not claim any firsthand knowledge of the "software and system" used by "every

vote tabulating company." The declarant's wild overreach is another reason that Ms. Powell knew or had obvious reasons to doubt the declarant's veracity.

406. Fourth, the declarant's description of Smartmatic's role in Venezuela is inconsistent with readily verifiable facts about elections in Venezuela. For example, the declarant says Smartmatic joined a conspiracy to create a voting system that could "change votes in elections from votes *against* persons running the Venezuelan government to votes *in their favor* in order to maintain control of the government." That claim, however, is inconsistent with Smartmatic's public announcement in 2017 that the Venezuelan government reported election results different than the actual vote. Smartmatic would have no reason to publicly announce that the Venezuelan government had misreported the election results if Smartmatic was conspiring with the Venezuelan government.

407. Similarly, the declarant states that the system Mr. Chávez wanted designed would "not leave any evidence of the changed votes." But Smartmatic's election technology and software create paper trails for purposes of auditing the election results. This was true with the election technology and software used in Venezuelan elections. This is known to anyone who participated in the Venezuelan elections and readily verifiable by third-party watchers of the Venezuelan elections. A paper trail for audit purposes is inconsistent with "not leav[ing] any evidence of changed votes."

408. Fifth, the declarant's description of the 2013 election is inconsistent with his/her/its description of how Smartmatic's election technology and software work. The declarant states that during that election, Nicolas Maduro "ordered network controllers to take the internet itself offline in practically all parts in Venezuela and to change the results" and then they "turned the internet back on" after two hours. That description cannot be reconciled with the declarant's claim that

Smartmatic's election technology and software could change votes from one candidate to another. Mr. Maduro would not have needed to "take the internet itself offline" if Smartmatic's technology and software can simply switch votes in an undetectable way.

409. Sixth, if the declarant was Leamsy Villafaña José Salazar, as some reports have indicated, then the declaration is inconsistent with prior statements that have been attributed to Mr. Salazar and that were available to Ms. Powell. Mr. Salazar was a source for *Boomerang Chávez: The Fraud*, and reportedly discussed potential voting fraud with the book's author. The book makes no mention of the meetings that the declarant claims occurred in or after February 2009. Mr. Salazar is described in *Boomerang Chávez* as claiming to have no awareness of voting fraud until 2013, long after the meetings that the declarant now claims to have attended.

410. ***Cardozo Statement****:* Ms. Powell knew the Cardozo Statement was not reliable and/or had obvious reasons to doubt the veracity of the Cardozo Statement. One month before signing the Statement, on October 16, 2020, Ms. Cardozo signed an "Anniversary Message" to "Asgardians" as the "Former Prime Minister" of the "space nation" of "Asgardia." Smartmatic takes no position on Asgardia and does not criticize Ms. Cardozo's involvement with Asgardia. It appears to be a well-intentioned group. However, Ms. Cardozo's prominent role with Asgardia in 2020 alerted or should have alerted Ms. Powell that Ms. Cardozo's focus in 2020 was not on Smartmatic's involvement with the U.S. election.

411. First, Ms. Cardozo does not claim to have any knowledge of Smartmatic's role in the 2020 U.S. election. Nor does she claim to have any knowledge of the election technology and software used by any voting company in the 2020 U.S. election. She does not claim any knowledge of election technology and software other than what may have been used in the 2004 election in Venezuela.

412. Second, Ms. Cardozo's claim that she is familiar with the Smartmatic election technology and software used in 2004 is not consistent with her claim of being fired from her position. Ms. Cardozo states that she received "a letter in March 2004 stating that [her] position was trusted and trust had been lost in [her] and [she] was fired from service." Venezuela had a referendum election in August 2004 and a regional election in October 2004. Based on Ms. Cardozo's termination, Ms. Powell knew or should have known that Ms. Cardozo could not have firsthand knowledge of the election technology and software that was actually used in the 2004 elections months after she had been fired.

413. Third, Ms. Cardozo's statement contains phrasing that indicates that the same person drafted her statement as drafted the Anonymous Declaration.

Cardozo Statement	**Anonymous Declaration**
"This conspiracy began more than a decade ago in Venezuela and has spread to countries ***around*** the world. It is a conspiracy to ***unjustly*** gain and ***maintain*** power and wealth. ***These are*** political leaders, powerful companies, and ***others*** whose purpose is to gain and ***maintain*** power by changing ***people's free will*** and subverting the proper course of governing."	"This conspiracy began more than a decade ago in Venezuela and has spread to countries ***all over*** the world. It is a conspiracy to ***wrongfully*** gain and ***keep*** power and wealth. ***It involves*** political leaders, powerful companies, and ***other persons*** whose purpose is to gain and ***keep*** power by changing the ***free will of the people*** and subverting the proper course of governing."

414. These sentences are the same other than a few word choices – almost as if someone who was drafting them wanted to make them appear slightly different. Regardless, the similarities suggest that the Cardozo Statement and Anonymous Declaration were not drafted by the signatories but instead by someone else who, unlike the signatories, was located in "Dallas County, Texas." Ms. Powell and her law office are located in Dallas County, Texas.

415. Fourth, Ms. Cardozo's statement includes obvious speculation regarding events that she did not witness firsthand. For example, Ms. Cardozo states that there is "convincing evidence that there was no genuine competition for the electoral system contract or serious consideration

for alternative contracts. There was no due diligence and the bidding was rigged." But Ms. Cardozo was not involved in that process. Ms. Powell knew or should have known that Ms. Cardozo was speculating regarding events.

416. Fifth, Ms. Cardozo's statements include assertions that are demonstrably false. For example, Ms. Cardozo states: "It was not surprising that Hugo Chávez and his successors then constantly won the election through the use and manipulation of the Smartmatic voting system." But Mr. Chávez did not "constantly" win elections after 2004. Just three years later, in 2007, Mr. Chávez lost a critical election that would have expanded his power considerably. Mr. Chávez's loss is well known and easily discovered. Based on that fact, Ms. Powell either knew or should have known that Ms. Cardozo either (a) had a tendency towards exaggeration or (b) has her facts wrong.

417. ***Cobucci Affidavit.*** Ms. Powell knew the Cobucci Affidavit was not reliable and/or had obvious reasons to doubt the veracity of the Cobucci Affidavit. First, Ms. Powell's actions demonstrate that she knew the Cobucci Affidavit was not reliable or credible. Ms. Powell filed the Cobucci Affidavit in one lawsuit on November 25. She did not file the Cobucci Affidavit in any of the other lawsuits, notwithstanding its salacious accusations about Smartmatic. If Ms. Powell believed the Cobucci Affidavit was reliable or credible, she would have used it with the other lawsuits. That she did not indicates that she knew the Cobucci Affidavit could not be relied upon.

418. Second, Mr. Cobucci does not claim to have any knowledge of Smartmatic's role in the 2020 U.S. election. Nor does he claim to have any knowledge of the election technology and software used by any voting company in the 2020 U.S. election. And he does not claim to have any firsthand knowledge regarding the election technology and software actually used in

Venezuelan elections. Ms. Powell knew that Mr. Cobucci was not a source that could support her claims about Smartmatic's role in the 2020 U.S. election.

419. Third, the Cobucci Affidavit makes an impossible claim. Mr. Cobucci claims that Antonio Mugica's father was sad in January 2004 because Antonio Mugica had converted to communism and had "manipulated the Smartmatic system utilized during the election to ensure that President Chávez was successful during the 2004 elections." This is impossible. The first election of 2004 took place months later in August 2004. Moreover, Smartmatic did not even win the bid to provide technology for the 2004 elections until well after January 2004. Ms. Powell knew or should have known the timing of the 2004 elections and, therefore, knew or should have known that Mr. Cobucci's claim was not possible.

420. Fourth, the Cobucci Affidavit makes accusations that are inconsistent with readily verifiable facts. For example, Mr. Cobucci states that Mr. Mugica told him in 2004 that Smartmatic would "make sure that the communist party never lost another election in Venezuela." But it did. Just three years later, in 2007, Mr. Chávez lost a critical election that would have expanded his power considerably. Mr. Chávez's loss is well known and easily discovered. Moreover, in 2017, Smartmatic publicly announced that the government had reported inaccurate election results. Those readily verifiable facts are inconsistent with Mr. Cobuccio's statement that Mr. Mugica never wanted to see the communist party lose again in Venezuela, and, was or should have been a red flag to Ms. Powell regarding Mr. Cobuccio's credibility.

421. Fifth, Mr. Cobucci makes statements that are inconsistent with the statements made in the Cardozo Statement. Mr. Cobucci states that Smartmatic entered a contract with the Venezuelan government in 2002 (in connection with the 2004 election) and was paid "millions of dollars" by the Venezuelan government "from 2003 to 2015." But, the Cardozo Statement says

that Smartmatic was not picked as an election technology supplier for the 2004 election until February 2004 and did not sign a contract until March 2004. Mr. Cobucci's claims that Smartmatic signed a contract in 2002 and was paid by the Venezuelan government in 2003 are not consistent with what Ms. Powell was allegedly told by Ms. Cardozo.

E. Defendants used their disinformation campaign against Smartmatic for financial gain and acted with ill-will and improper motives.

422. Defendants not only knowingly participated in publishing false information about Smartmatic during the disinformation campaign, they also did so with ill-will and improper motives for self-preservation, self-promotion, and financial and other gains.

1. The Fox Defendants sought to solidify their position with viewers and readers who supported President Trump.

423. On information and belief, the Fox News Defendants were motivated, in part, by the desire for ratings, to cater to individuals and companies supporting President Trump, and to avoid losing viewers to competing media organizations like OAN (One America News) and Newsmax.

424. As discussed earlier, Fox News is the most watched cable news channel in history, reaching millions of viewers every day, and its digital presence achieved record numbers in 2020 across multiple metrics. However, it is not immune to competition. In 2019, CNN reported that OAN was the "cable network that is Foxier than Fox—and that Trump is promoting."[35] In 2020, it was widely reported that Fox News had been rebuked by President Trump for being too critical of his administration, while he had praised OAN.

425. Following the 2020 election, Fox News faced unique market pressure from the emergence of two other media organizations—OAN and Newsmax. OAN and Newsmax channels

[35] *Available at* https://www.cnn.com/2019/05/14/media/one-america-news-fox-trump/index.html

viewership surged after election day and benefited from President Trump's denouncement of Fox News. A trend clearly emerged in early to mid-November—Fox News began competing for viewers with these two organizations.

426. For example, it was reported that from the beginning of July to the week before election day, Newsmax averaged 58,000 viewers from 7 to 10 p.m. on weekdays; but that jumped to 568,000 the week after the election. In the same period, daytime viewership increased from 46,000 to 450,000 and it was reported that "Trump-friendly Newsmax" was seeking to cut into Fox's viewership. Further, it was reported that on November 19, 2020, Newsmax drew its biggest audience ever, notching 1.1 million viewers at 7 p.m. and that the "out-of-nowhere rise has come as Fox News – the No. 1 network in TV news and long the destination of choice for many Trump partisans – has experienced a rare dip in dominance." "Ratings for the Ruport Murdoch-owned network have dropped since election night, when its early projection that Mr. Biden had won Arizona infuriated Mr. Trump and his allies."[36]

427. Thus, in November 2020, Fox News faced increasing pressure from President Trump and competition from other news outlets. That pressure to appease the Trump administration only increased once results for the 2020 U.S. election were reported. Once Fox News called Arizona for Joe Biden, many of the millions of individuals who supported President Trump began turning against Fox News. Social media was filled with posts threatening to boycott Fox News and its affiliates due to its coverage of the election results.

428. Indeed, it was widely reported that President Trump was angry with Fox News for projecting Biden's win in the election early and that Newsmax planned to capitalize on that anger. For example, the New York Times reported that when Fox News called Arizona for Biden at 11:20

[36] *Available at* https://www.nytimes.com/2020/11/22/business/media/newsmax-trump-fox-news.html)

pm on Tuesday, November 4, with 73% of the state's vote counted, "Mr. Trump and his advisors erupted at the news..."[37]

429. Quantitatively, Fox News saw its dominance in primetime ratings over other news channels, like OAN and Newsmax, fall significantly. The week prior to the 2020 election, Fox News had primetime ratings 90 times greater than that of Newsmax. The first full week after the election, that lead had been literally decimated, to less than 9 times the viewers of Newsmax. In the month of November 2020, Newsmax grew its average primetime viewers from 57,000 the first week of the month to 401,000 in the final week. This growth was driven, at least in part, by Newsmax's coverage of the election results (including entertaining allegations of voter fraud and a stolen election).

430. It was in this competitive environment that Fox News joined Mr. Giuliani and Ms. Powell in championing the disinformation campaign against Smartmatic. The disinformation campaign provided Fox News an opportunity to reclaim its position with President Trump and his supporters.

431. Lou Dobbs: On information and belief, the ability to gain viewers for his show and the Fox News network and his strong allegiance to former President Trump was a significant motivator for Mr. Dobbs to knowingly make and allow Defendants Giuliani and Powell to make false statements about Smartmatic.

432. In the mid-1970s, Mr. Dobbs was a local television anchor and reporter before joining CNN, where he served as a chief economic correspondent, managing editor and executive vice president, as well as hosting various programs, including *Moneyline*, which premiered in 1980 and was later renamed *Lou Dobbs Tonight*. Mr. Dobbs joined Fox News in November of 2010.

[37] *Available at* https://www.nytimes.com/2020/11/04/us/politics/trump-fox-news-arizona.html).

He hosts *Lou Dobbs Tonight*, which Fox Business touts as "the #1 news program on business television."

433. However, Mr. Dobbs' star had faded in the years after he joined Fox News until the 2016 election of President Trump. It was then that he had a breakthrough. Mr. Dobbs' viewership for his nightly news broadcast on Fox News "spiked nearly 200% from 2015 to 2016" and among "viewers aged 25-54, the demographic most coveted by advertisers, the show saw a jump of 282%." (1/10/17 CNN Business, Lou Dobbs is making his ratings great again, Exhibit 107).

434. Mr. Dobbs' alignment with President Trump immediately translated to a mutually beneficial symbiosis. Indeed, the New York Times has referred to their relationship as a "lovefest." In an October 2017 interview, less than a year after President Trump's inauguration, Mr. Dobbs opened the interview by gushing, "You have accomplished so much," and signed off by adding, "You are, if I may say, everything as advertised as you ran for president." It has been reported that Trump typically refers to him as the "Great Lou Dobbs." More significant is the unprecedented access to the Oval Office that was reportedly bestowed upon Mr. Dobbs during the Trump administration. Reportedly, President Trump regularly conferred with Mr. Dobbs to solicit his input and advice.

435. It was, therefore, in Mr. Dobbs' interest to continue to support President Trump following the 2020 U.S. election. That support included joining the disinformation campaign against Smartmatic. Mr. Dobb's statements and implications that Smartmatic had stolen the 2020 U.S. election was consistent with his motivation to be perceived as loyal to President Trump and to continue to receive support from the millions who supported President Trump.

436. Maria Bartiromo: On information and belief, the ability to gain viewers for her own program and to raise her profile at the network was a significant motivator for Ms. Bartiromo to

knowingly allow Defendants Giuliani and Powell to make false statements about Smartmatic on her program and affirm those false statements herself.

437. Ms. Bartiromo began her news career as an executive producer and assignment editor with CNN Business, where she worked with and was supervised by Lou Dobbs. Ms. Bartiromo's onscreen career began five years later, when she began hosting and contributing to *Market Watch* and *Squawk Box* on CNBC. Ms. Bartiromo is widely credited as being the first person to report live from the trading floor of the New York Stock Exchange. Ms. Bartiromo quickly became a star on the business network, gaining a reputation for her ability to book sought-after interviews, particularly with CEOs of the companies she covered.

438. After twenty years as one of the primary faces of CNBC, in 2013, Ms. Bartiromo signed a six-year contract with Fox News. Although the deal reportedly included a greater salary than the contract offered by CNBC, an additional motivation for the move was the opportunity to expand her brand beyond financial market reporting.

439. Fox News provided that opportunity. In addition to having programs covering the financial markets - *Mornings with Maria* covers news prior to the stock markets' opening - her contract provided her with a Sunday morning news show and opportunities to appear on Fox News. With a significantly larger audience and access to a greater number of households, appearances on Fox News offered Ms. Bartiromo the opportunity to enhance her brand, both by broadening the topics she discussed and exposing her to viewers outside of business.

440. Like many broadcast and cable news programs, Ms. Bartiromo's programs enjoyed increased viewership during President Trump's administration. In 2019, *Sunday Morning Futures with Maria Bartiromo* was the number one weekend cable news show in the key 25-54 demographic, and *Mornings with Maria* was a top-five show in the demographic for its category. However, continuing to have access to key interviews remained an important part of keeping Ms.

Bartiromo's programs popular and relevant. Not only was securing an interview prioritized, but Fox News valued exclusivity. If an official made too many appearances, the impact of their appearance on ratings was perceived to be diluted, so programs pushed for exclusivity or to be the first appearance for officials after major events.

441. In this competitive environment, Ms. Bartiromo joined Mr. Giuliani and Ms. Powell in claiming that Smartmatic had stolen the 2020 U.S. election from President Trump. Ms. Bartiromo joining the conspiracy would help her obtain more exclusive interviews with President Trump (in and out of office) as well as individuals and companies who supported President Trump. Indeed, Ms. Bartiromo's decision to join the conspiracy paid off.

442. Ms. Bartiromo was rewarded with the first post-election interview with President Trump. On November 29, 2020, Ms. Bartiromo broadcast a nearly 45-minute interview with President Trump. From there, her fortunes at Fox News have only risen. Fox News recently added an hour-long opinion program to its weekly primetime schedule, *Fox News Primetime*. Ms. Bartiromo has been named among the initial set of hosting opportunities as a tryout for the permanent position, bringing Ms. Bartiromo closer to her goal of completely branching beyond financial market reporting. On information and belief, Ms. Bartiromo's willingness to host Mr. Giuliani and Ms. Powell and characterize Smartmatic as a perpetrator of a widespread voting technology fraud designed to steal the election from former President Trump was motivated, in part, by self-promotion and preservation.

2. Mr. Giuliani and Ms. Powell used the disinformation campaign to further their personal and financial interests.

443. Mr. Giuliani and Ms. Powell understood that making statements about Smartmatic on the various Fox News programs could not change the outcome of the 2020 U.S. election. However, on information and belief, changing the outcome of the 2020 U.S. election was not their

motivating factor when engaging in the disinformation campaign. Mr. Giuliani and Ms. Powell used the disinformation to curry favor with President Trump and his supporters and to pursue their own personal and financial interests.

444. During the disinformation, Mr. Giuliani sought the recognition and respect associated with being referred to as "the President's attorney." He also evidently sought significant payments for spreading the disinformation campaign. It has been reported that Mr. Giuliani requested payment of $20,000 per day from President Trump following the 2020 U.S. election.

445. Mr. Giuliani also sought to capitalize on the popularity he gained as a primary speaker of the disinformation campaign against Smartmatic. Mr. Giuliani had his own YouTube station where he posted videos talking about the 2020 U.S. election being stolen. On those channels, he asked viewers to buy various products.

446. Finally, it was reported in 2020 that Mr. Giuliani was under criminal investigation. It was also reported that Mr. Giuliani discussed obtaining a pardon from President Trump. It so, Mr. Giuliani may have also seen his central role in the disinformation campaign as an opportunity to further curry favor with President Trump.

447. Ms. Powell is a self-published author of books that question government prosecutions, and that she actively promotes. She gained public attention when she represented Michael T. Flynn, President Trump's first national security advisor, who had pleaded guilty to lying to the FBI but later sought to withdraw his plea.

448. During the disinformation campaign, Ms. Powell's profile increased dramatically when she started claiming that Smartmatic had stolen the 2020 U.S. election and began appearing on Fox News. Ms. Powell went from a limited public profile to being known by the millions of individuals across the country who support President Trump, and they showed tremendous appreciation and admiration for what she was saying. On information and belief, this fame was a

motivating factor for Ms. Powell. Ms. Powell understood she could not change the outcome of the election with her disinformation campaign. She could, however, gain a bigger audience for her books and future endeavors.

449. One of those endeavors is the formation of fund-raising organizations. On December 1, 2020, she formed Defending the Republic, Inc., and on January 24, 2021, she formed Restore the Republic PAC. Her fundraising efforts tie directly into the disinformation campaign against Smartmatic. Ms. Powell's fundraising website, http://defendingtherepublic.org was created shortly after the 2020 U.S. election to solicit donations, even though the corporate form was not done until after her participation in the disinformation campaign. Ms. Powell made appearances that promoted her fundraising website while attacking Smartmatic.

F. Fox Defendants knowingly violated generally accepted journalistic standards when publishing the reports.

450. Upon information and belief, Fox News requires its anchors, reporters and producers to adhere to a code of conduct or ethics when investigating and publishing news reports. One of the reasons for journalists to adhere to a code of conduct is to make sure that they do not act with reckless disregard for the truth in investigating or verifying a report and do not publish misleading reports, particularly news reports being portrayed as presenting facts or evidence.

451. However, the Fox Defendants violated those generally accepted journalism standards. They did so because adhering to them would not have allowed them to: (a) purposefully avoid learning the truth about Smartmatic and its technology and software and use in the 2020 U.S. election; (b) publish the factually inaccurate and misleading reports about Smartmatic and its technology and software; and (c) interject Smartmatic into a wide-ranging criminal fraud to fix the 2020 election.

452. The Fox Defendants violated, at least, eleven generally accepted journalism standards. First, generally accepted journalism standards encourage reporters and producers to be accurate and fair when gathering and reporting information. The Fox Defendants violated this standard because, among other things, they reported information that they knew was not accurate, they reported information they knew was misleading, and they purposefully avoided learning the truth that was inconsistent with its preconceived narrative that Smartmatic had stolen the 2020 U.S. election.

453. Second, generally accepted journalism standards encourage anchors, reporters and producers to verify information before releasing it. The Fox Defendants violated this standard because, among other things, they did not verify or corroborate the information provided by their sources (whom they had obvious reasons to doubt) and did not verify or corroborate the many serious and broad-ranging statements and implications they published about Smartmatic. The Fox Defendants made no effort to reach out to Smartmatic before the start of its disinformation campaign for comment and/or to verify the accuracy of any statements and implications being made about Smartmatic, its history, its business, its technology or software, and/or its role in the 2020 U.S. election.

454. Third, generally accepted journalism standards encourage reporters and producers to gather and update information before and after publication of each report. The Fox Defendants violated this standard because they purposefully avoided gathering information inconsistent with their preconceived narrative and did not fully and properly update their reporting after being told and learning it was factually inaccurate and misleading.

455. Take just one example. On November 16, 2020, Smartmatic informed Fox News that it provided technology and software to only Los Angeles County and "had no involvement, direct or indirect, in any other country or state in the United States." (11/16/20 Smartmatic to Fox

News Email (Exhibit 81)). Yet, Fox News and Mr. Dobbs persisted in reporting that Smartmatic stole the 2020 U.S. election for Joe Biden and Kamala on November 19, 2020. Mr. Dobbs accused Smartmatic of criminal conduct in that broadcast even though Fox News understood that Smartmatic only provided technology and software in one county.

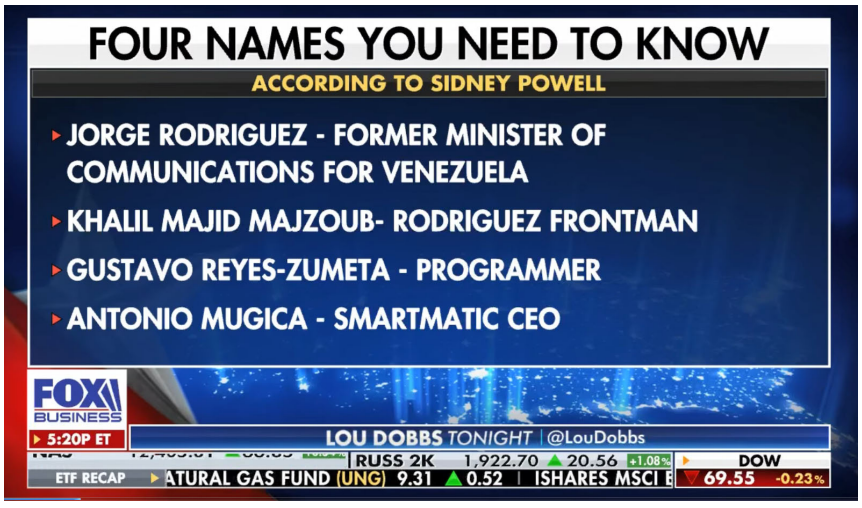
456. Fourth, generally accepted journalism standards encourage reporters and producers to disclose information about their sources so that readers and viewers can make informed decisions regarding credibility. The Fox Defendants violated this standard because they failed to disclose their sources' lack of credibility and lack of firsthand knowledge. As discussed above, the Fox Defendants had obvious reasons to doubt the veracity of Mr. Giuliani and Ms. Powell. But, instead of disclosing those doubts, the Fox Defendants endorsed what they were saying.

457. Fifth, generally accepted journalism standards encourage reporters and producers to seek out opposing views for a report. The Fox Defendants violated this standard because they intentionally avoided publishing statements by others who would have directly contradicted the false information that they presented. The Fox News publications at issue violated Fox News' own edict that its programming is fair and balanced. There was nothing fair and balanced about the Fox Defendants' coverage of Smartmatic during the disinformation campaign.

458. Sixth, generally accepted journalism standards encourage reporters and producers to avoid distorting facts. The Fox Defendants violated this standard because they did not provide the proper context for the statements made in the disinformation campaign. For example, the Fox News Defendants rarely called out Mr. Giuliani and Ms. Powell for stating that they have evidence to support their statements about Smartmatic without actually showing or disclosing the evidence. Other anchors at Fox News saw this problem and some said something. Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro did not.

459. Seventh, generally accepted journalism standards encourage reporters and producers to treat sources and subjects with respect. The Fox Defendants violated this standard. The Fox Defendants attached an under-the-radar election company that participated in one county during the 2020 U.S. election. The Fox Defendants made Smartmatic a villain in the minds of millions of readers and viewers in the United States and hundreds of millions around the world. The Fox Defendants did not care about the damage they did to Smartmatic.

460. The Fox Defendants, likewise, did not care about the damage they did the men and women who work at Smartmatic. For example, Mr. Dobbs tweeted: "The 2020 Election is a cyber Pearl Harbor: The leftwing establishment have aligned their forces to overthrow the United States government." In that tweet he includes an identification of the name of the CEO of Smartmatic, the face of the company. (Twitter, @LouDobbs, December 10, 2020 (Exhibit 40)). Then, during *Lou Dobbs Tonight*, Mr. Dobbs displayed a graphic (see below) with four names and stated, "it's important as we look at these four names, we're talking about a very large, a very large foreign intrusion and interference in the, in the election of 2020." One of those names was the Smartmatic's CEO.



461. Eighth, generally accepted journalism standards encourage reporters and producers to consider the long-term impact of their publications. The Fox Defendants violated this standard by publishing reports with the intent of harming Smartmatic and undermining the public's confidence in the integrity of the 2020 U.S. election. The Fox Defendants did not consider the long-term impact of their disinformation campaign on Smartmatic or the country.

462. Ninth, generally accepted journalism standards encourage reporters and producers to avoid conflicts of interest. The Fox Defendants violated this standard by allowing Mr. Giuliani and Ms. Powell to elevate their own self-interest above fairness and accuracy. Mr. Dobb's and Ms. Bartiromo's own actions before and after the disinformation campaign evidence an interest in advancing a preconceived story that sells as opposed to reporting the truth.

463. Tenth, generally accepted journalism standards encourage reporters and producers to be transparent with readers and viewers. The Fox Defendants violated this standard by failing to disclose to readers and viewers that it was not publishing an objective, fact-based report about Smartmatic. The Fox Defendants misled readers and viewers into believing that it was reporting news as a result of a fact-driven "investigation," when it was not.

464. Eleventh, generally accepted journalism standards encourage reporters and producers to admit and correct mistakes. The Fox Defendants violated this standard by failing to admit and correct the factual inaccuracies from the disinformation campaign after being informed of them. Smartmatic sent Fox News a retraction demand. While Fox News published the interview with Mr. Perez after receiving the demand, Fox News did not issue the requested retraction and did not fully admit and correct all of its mistakes.

465. The Fox Defendants' violation of generally accepted journalism standards demonstrates the intentionality of their actions. The Fox Defendants' reckless disregard for the

truth and purposeful avoidance of the truth were not the result of mistake or ignorance. The Fox Defendants knew what they should do to investigate and report on the events following the 2020 U.S. election. The Fox Defendants knew what they should do based on generally accepted journalism standards. The Fox Defendants intentionally and knowingly ignored those standards. They did so for self-promotion and preservation, and they maliciously attacked Smartmatic for these reasons.

V. Defendants' disinformation campaign irreparably harmed Smartmatic and its election technology and software.

466. Defendants saw the outcome of the 2020 U.S. election as a final opportunity to curry favor with the outgoing administration and endear themselves to President Trump's millions of supporters. The vehicle they used was a disinformation campaign against Smartmatic as it allowed them to cast themselves as heroes in a story about a villainous foreign company that had stolen the election from President Trump. The predictable and natural result of the Defendants' disinformation campaign was to destroy Smartmatic's reputation, undermine confidence in Smartmatic's election technology and software, and put people's lives in danger.

467. For many Americans, and people across the world, their first exposure to Smartmatic's brand was the Defendants' description of Smartmatic as the communist/socialist-funded foreign company that had rigged the 2020 U.S. election, sent votes overseas for tabulation during the election, had its software compromised during the election, and had been previously banned in the U.S. That is how Defendants branded Smartmatic.

468. The story that Defendants invented about Smartmatic has been shared widely, exposing hundreds of millions to harmful narratives about Smartmatic and its election technology and software. Surveys suggest that a third of American adults believe that fraud changed the

outcome of the election, and over half of American adults support the creation of a commission to investigate "potential irregularities in the 2020 election."

469. For Smartmatic, the effects of the disinformation campaign have been swift and devastating. Smartmatic's support lines and customer-service inboxes have been filled with death threats, forcing Smartmatic to invest heavily in increased security for its offices and personnel. The threats and added stress from the negative publicity has put an immeasurable strain on the company's workforce, requiring significant investment in retention and recruitment programs.

470. The backlash created by Defendants' disinformation campaign has also decimated Smartmatic's future business prospects. Client contracts that were awarded prior to the 2020 U.S. election or that were otherwise considered close to finalized have been jeopardized, forcing Smartmatic to reallocate its sales team to protect existing business instead of seeking out new opportunities. And nearly all strategic partners, from financing sources to technology partners, have begun reevaluating their relationships with Smartmatic.

471. For the five-year period ending December 31, 2025, the Smartmatic election technology business line forecasts over $500 million in lost profits under base contracts alone as a result of Defendants' disinformation campaign. This does not include the profits that Smartmatic would have enjoyed from add-ons or other services that almost always accompany such base contracts, which Smartmatic estimates as not less than $190 million. Smartmatic's election technology business enterprise value has likewise suffered, with its election-related brand, reputation, and enterprise value losing over $2.4 billion as a result of the disinformation campaign. In total, the entire SGO Corporation enterprise value – which includes the election technology business as well as Airlabs and Folio business lines – has been damaged by not less than $2.7 billion.

472. These calculations for economic and non-economic loss are easy to understand. Over the last twenty years, Smartmatic built its brand around the core mission of providing election technology and software that ensured secure, accurate, and auditable elections. Defendants' disinformation campaign took aim at the key value-drivers of Smartmatic's election business – providing secure, reliable, and auditable elections – and undermined the premise that Smartmatic could help election officials to persuade the public of the integrity of election results.

473. For many younger democracies, part of the value derived from hiring Smartmatic was its long history of providing secure, accurate, and auditable elections. Smartmatic's reputation as a reliable, trustworthy company provided decision-makers confidence when they were selecting Smartmatic as a partner in the voting process. Now, those same decision-makers will face scrutiny for making a decision to hire Smartmatic, which would have been a logical and risk-free decision prior to the 2020 U.S. election.

474. Even with a full retraction from all Defendants, Smartmatic will spend years rebuilding its reputation and battling the perception that it was involved in election fraud. This Complaint is the first step in that rebuilding process. The harm suffered by Smartmatic, coupled with the malicious nature of the disinformation spread by the Defendants, justifies significant punitive damages.

A. Defendants' disinformation campaign created a public backlash against Smartmatic.

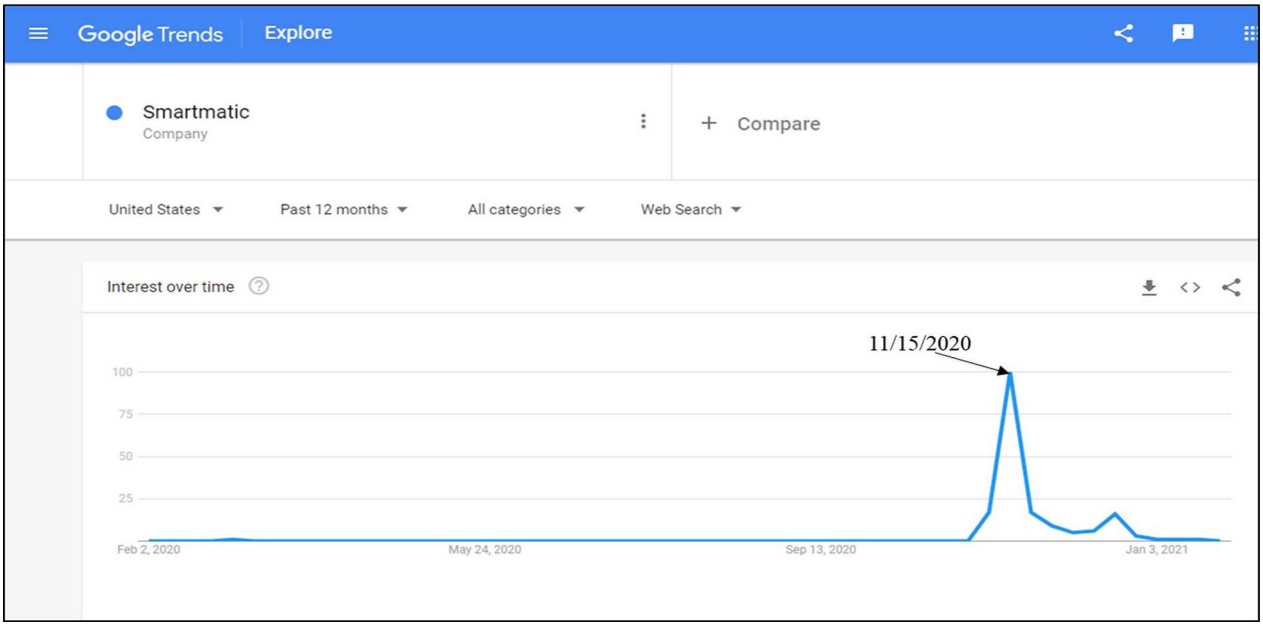
475. The 2020 U.S. election initially was a success story for Smartmatic.

476. For several years, Smartmatic had not operated in the United States, but, by providing voting machines and related services to Los Angeles County – the largest single voting jurisdiction in the U.S. – it hoped to have a case study to show other U.S. jurisdictions how well it could service American elections.

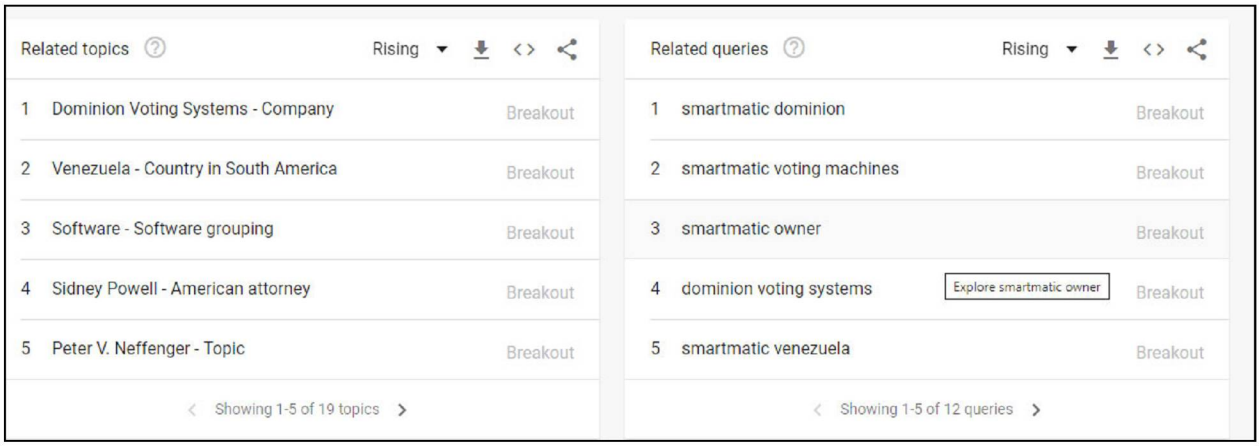
477. As polls closed on November 3, 2020, Smartmatic had achieved that goal. Despite the challenges of the COVID-19 pandemic, it had successfully installed a *Voting Solutions for All People* system under the direction of the County, trained election officials and volunteers on how the devices were used, and handled the logistics for vote centers, from set-up to wrap-up. The devices were even designed for quick and straightforward sanitation to better protect California's voters from the ongoing pandemic. In other words, despite setting an extremely ambitious goal by having its U.S. rollout be in the largest voting jurisdiction in the United States, Smartmatic had executed on its strategic plan and was ready to continue its planned expansion into U.S. voting jurisdictions.

478. Unfortunately, Defendants initiated a disinformation campaign against Smartmatic before the company could even complete celebrating its success in Los Angeles County. On November 12, 2020, Mr. Dobbs and Mr. Giuliani started the disinformation campaign on *Lou Dobbs Tonight*. By November 15, the other individual Defendants had joined the campaign and had poured gasoline on the fire with more false statements centering around how a corrupt Venezuelan company had stolen the 2020 U.S. election with its corrupt election technology and software.

479. The effect of Defendants' decision to pull Smartmatic into their false narrative about a stolen election was swift. Smartmatic was an under-the-radar company prior to the 2020 U.S. election. It was known among the officials who purchase election technology and software, but not the general public. That quickly changed as a result of Defendants' disinformation campaign. For example, according to Google Trends, on November 15, only three days into the Defendants' campaign, more people searched for Smartmatic than at any point in the prior twelve months. There was a 100x increase in searches for Smartmatic.



480. Google Trends also suggests this increased awareness was negative and linked to the disinformation campaign: the breakout searches related to Smartmatic include "smartmatic Venezuela," "dominion smartmatic," and "smartmatic owner."



481. The image Defendants created of Smartmatic with the disinformation campaign was, of course, negative. Defendants' disinformation campaign included the use of social media, including Twitter, Facebook, and YouTube. This allowed people who read and heard Defendants' statements about Smartmatic to respond in real time with their impression of Smartmatic based on

what they read and heard from Defendants. It was not good. Below are just some of the comments made by people who read or heard Defendants' statements about Smartmatic:[38]

Medium	Reporter	Comment
YouTube	Bartiromo	"A Venezuelan country counting ballots ??? What happened to other countries interfering with our elections ????"
YouTube	Bartiromo	"A Venezuelan company?? Yep that's all the evidence you need to have of fraud if you have any bit of understanding of what is going on and what Venezuela is like. Enough said right there."
YouTube	Bartiromo	"Venezuela was counting out ballots….!!!! Wtf!!!"
Facebook	Dobbs	"this is very sad. The election was interferences from China, Venezuela. That's treason."
Facebook	Dobbs	"I am ready to see this information get out! We have been attacked, we need to fight! We knew it wasn't right but now we see it was orchestrated and from foreign players. This should be cause for military action!"
Twitter	Dobbs	"SMARTMATIC, the Company in charge of the HUGE Fraudulent Voting System in #Venezuela Smartmantics - Dominion manufactured voting machines used in Michigan, Georgia/33 U.S. states is Mark Malloch Brown, serves on Open Societies Foundation Board (founded by George Soros – Mallo"
YouTube	Bartiromo	"The software was made in Venezuela to fix votes !!!! They used it in Georgia, Arizona, Michigan, and Pennsylvania !!!"
Facebook	Dobbs	"Here's the beginning of the release of the Sidney Powell Kraken… Bottom line… Smartmatic was busy selling its 'fraudware' around the world to whatever politician or campaign would buy it. In other words a politician or candidate could win their race by buying ballot counting machines for their district that would STEAL votes away from the opponent and flip the votes electronically to the one paying the fraudsters who were hired to sit in the shadows operating the machines remotely in real time. That's THE STEAL. That's the FRAUD against Donald Trump."
YouTube	Bartiromo	"There is, without a doubt, evidence of election fraud on the part of the Democratic Party. Election fraud has occurred and needs to be punished by law. Additional evidence includes...use of Dominion (and, apparently Smartmatic) software, the original purpose of which was fraud in an election."
Facebook	Dobbs	"I appreciate Lou Dobbs For being willing to share Sidney Powell's evidence of fraud for the American people to be

[38] Smartmatic has not corrected spelling or punctuation in the comments. Smartmatic has removed the name of the commentator to respect privacy.

Medium	Reporter	Comment
		made even more aware of all the corruption in OUR 2020 election."
Facebook	Dobbs	"Simply Treasonous Fraud at the highest levels!"
Twitter	Dobbs	"The Trump vote was so overwhelming that it BROKE the algorithm! Hence why they had to stop the counting and bring in the dead of the night drops going 100% to 0% in order to catch up! Smartmatic a foreign owned company, worked in conjunction with communists & media to STEAL ELECTION."
YouTube	Bartiromo	"All this time wasted. The only way to secure our elections is to have everyone cast their vote on paper ballots and have those ballots counted by hand by both members of the parties and sworn in elected officials under surveillance! Eliminate electronic voting machines entirely! They can are probably hacked and manipulated. The time we are wasting here is allowing all these Trump paper ballots to be destroyed forever. A nationwide re vote by all Americans is necessary now or our elections system is forever corrupted."
Twitter	Dobbs	"Shows how corrupt smartmatic is."
Twitter	Dobbs	"Thanks to Soros, Smartmatic Voting Machines help the Democrats disenfranchise Millions of Voters. Millions more were also disenfranchised by Dominion Voting Machines."
Twitter	Dobbs	"Ahhh. See no 'systemic fraud….' Just SMARTMATIC fraud. Get em' RudyGiuliani SidneyPowell1 [American flag emoji] is counting on you"
Twitter	Dobbs	"A electronic Coup de ta with massive massive Conspiracy"

482. The backlash against Smartmatic did not stay virtual, however. Smartmatic was soon inundated with emails and voicemails from people convinced that it had stolen the 2020 U.S. election by manipulating the vote. The following are just some examples:[39]

a. November 13: "The word will get out about what you have done. There are millions of people that question your integrity. That can't end well."

[39] Smartmatic has not corrected spelling or punctuation in the emails. Smartmatic has replaced profanity with [***]. Smartmatic has removed the name of the individuals who sent the emails to respect privacy.

b. November 14: "Hey Fraudulent people, You are in for a rude awakening. Nice try though. Start adjusting your diets to those prison meals."

c. November 14: "We see some of you making last minute travel plans? Futile. It's time to come clean or pay the man. Don't try to run, accidents happen."

d. November 14: "You [f***ing] frauds and Treasonous, Seditious Bastards need to start talking because if this Election is Certified based on your active Fraud Orchestration ... you all will be hunted ... [F***] you Criminal Frauds..."

e. November 14: "Regretting decisions past? Anywhere to run?"

f. November 14: "US troop movements in darkness."

g. November 14: "[F***en] scumbags, trying to [f***] with the elections, [M***ers] die in hell, Trump2020."

h. November 15: "Traitors get prison."

i. November 15: "You are being surveilled 24/7 to see if you do anything dumb."

j. November 15: "You are a cheating socialist PIG. God sees what you are doing and in the end you will have to answer for your sins."

k. November 16: "Location acquired ... Here we come."

l. November 16: "Well, it appears your company, its officers and employees are all going to jail ... for Federal Election Fraud which is a Federal crime ... If I were working for your company, I would quit right now and move to another Country. 'The Kraken has been released.'"

m. November 16: "Looking forward to your fraudulent company being exposed for tampering with election results. Hopefully Neffenger, who is on board of directors, along with Creepy Joe Biden transition team, gets to spend a long time in jail!"

n. November 16: "Admiral Pete you there? Still not talking huh? Very 'special' Marine Corp Veterans are seeking you right now, good luck buddy. Combat Veterans have a special love for traitors. Tick Tock Pete. ... It's never too late [d***head], unless they find you first ... lol."

o. November 16: "Location acquired ... Can you feel us closing in? WE LOVE THE SMELL OF NAPALM IN THE MORNING."

p. November 21: "The only way to resolve your interference in Western democracy is to shoot dead your company executives."

q. November 21: "Surveillance is complete and ongoing, life becomes difficult. What's it like to live in fear?"

483. Smartmatic and its employees were also subjected to threatening voicemails. For example, on November 15, 2020, Smartmatic received a voicemail on its customer service/general corporate line stating: "Hey stupid, [m***ers]! We're going to [f***] you up. You ain't got [s***], you little [p***]. This is it, it's war, it's on." Even the 14-year-old son of one of Smartmatic's executives received a harassing phone call as a result of the Defendants' campaign to cast Smartmatic as the villain in their story.

484. These communications, along with the other threats, taunts, and accusations that have been directed to Smartmatic or generally posted online have left Smartmatic's personnel shaken and scared. Smartmatic has responded with increased physical and cyber security. But the

fear lingers. Defendants' disinformation campaign has caused the men and women who work at Smartmatic to fear for their safety.

485. Moreover, these communications and the comments left by people who read or heard Defendants' disinformation campaign demonstrate the lasting damage done to Smartmatic's brand. Smartmatic was a company that decision-makers could once trust given its reputation for secure, accurate, and auditable elections. Smartmatic was a safe choice. Now, Smartmatic is known by voters in the United States and abroad as a criminal that stole the 2020 U.S. election. Defendants knew the effect their disinformation campaign would have on Smartmatic. They did not care.

B. Defendants' disinformation campaign has jeopardized Smartmatic's multi-billion-dollar pipeline of business.

486. SGO Corporation has three primary business lines within its corporate family: Smartmatic Elections,[40] Airlabs, and Folio.

487. First, Smartmatic Elections generates revenue through the primary election technology, software, and support services business, and also provides products and services related to identity management (including biometric identification services), air quality management for governments and municipalities, and automated/robotic sterilization services (like those used to disinfect rooms during the current pandemic).

488. Second, SGO Corporation also offers air-quality management tools through its investment in Airlabs. Smartmatic serves as a key vendor for selling Airlabs products and services, meaning losses to Smartmatic Election's sales of air quality management and related products also directly damages the revenues and profits of Airlabs.

[40] The term "Smartmatic Elections" refers to the Smartmatic elections technology business line and the entities who operate such business line, distinct from the Airlabs and Folio business lines.

489. Third, SGO offers identity management, including biometric verification and identity services, through its Folio subsidiaries. As with the Airlabs business line, Smartmatic is a vendor for Folio and any loss of sales of Folio products due to the false statements of the Defendants affects SGO's profits twice: once at the Smartmatic Elections family and again at the Folio family.[41]

490. Defendants' disinformation campaign has harmed and damaged the business prospects for all three business lines. The general perception that Smartmatic executed an election fraud has also undermined Smartmatic Elections' relationships with key vendors and other business partners.

491. Two material business partners have indefinitely suspended their relationship with Smartmatic. Nearly all business partners from financing sources to local, on-the-ground partners have asked for additional information on how Smartmatic is responding to Defendants' disinformation campaign. Relationships that were once rock-solid are now strained, as other businesses fear being pulled into the frenzy surrounding the baseless allegations that Smartmatic manipulated the results of the 2020 U.S. election.

492. Clients - i.e., voting jurisdictions and governments - have also expressed serious concerns about continuing to do business with Smartmatic or being associated with the Smartmatic brand. Multiple jurisdictions have seen elected officials raise questions about using Smartmatic or change positions on electoral modernization projects due to Smartmatic's involvement. Entire

[41] The profits generated by all Folio and Airlabs entities inexorably flows into SGO Corporation. SGO Corporation owns 100% of the Folio entities, meaning 100% of the profits flow into SGO Corporation. SGO Corporation owns 47.14% of the outstanding equity of the Airlabs operating entities, meaning 47.14% of those profits flow into SGO Corporation.

countries have delayed the planned adoption of new voting technology by years because of the disinformation campaign.

493. Given how widely the disinformation and lies concocted by the Defendants has spread, Smartmatic has had to address questions from customers in Asia, Europe, Africa, South America, and North America. Smartmatic is facing headwinds with virtually every existing customer and opportunity. Any jurisdiction contemplating hiring Smartmatic risks having political opponents claim fraud just because of Smartmatic's involvement. Even customers that are confident that Smartmatic was not involved in voter fraud and otherwise do not believe the Defendants' disinformation campaign have expressed that, due to the false statements made and spread by the Defendants, it is too toxic for them to do business with Smartmatic. Government officials have stated that, due to the ongoing controversy and the desire to avoid the baggage and noise currently surrounding Smartmatic, they cannot justify engaging Smartmatic even though Smartmatic offers the best technological solutions for their jurisdiction.

494. Indeed, due to concerns about the disinformation spread by the Defendants, Smartmatic has seen clients question already-awarded contracts. Smartmatic has materially reduced its forecasted revenues due to the ongoing harm caused by the Defendants' willful and knowing lies about Smartmatic and its contacts. In total, SGO Corporation Limited ("SGO Corporation"), Smartmatic USA's ultimate parent company, will suffer more than $767.4 million in lost profits over the next five years due to harm caused to the business pipeline by the Defendants' disinformation campaign.[42] These losses are composed of: (i) $690 million in lost profits for the Smartmatic Elections family based on elections technology sales; (ii) $29.8 million

[42] This figure only represents the impact of decreased revenues on profits. It does not include the forecasted $75.9 million increase in expenses arising from the disinformation discussed later herein. Thus, SGO Corporation will suffer more than $843.3 million in actual damages over the next five years when considering the impact of both decreased revenues and increased expenses.

in lost profits for Smartmatic due to lost sales of Airlabs products; (iii) $21.4 million in lost profits for Smartmatic due to lost sales of Folio products; (iv) $8.8 million in lost profits at the Airlabs family due to Smartmatic losing sales of Airlabs products; and (v) $17.4 million in lost profits at the Folio family due to Smartmatic losing sales of Folio products.

1. Defendants damaged Smartmatic's election technology and software business

495. Smartmatic's election technology and software business were most clearly harmed by Defendants' disinformation campaign. Its primary business is to contract directly with government entities running elections, and its value proposition is based on the security, accuracy, and auditability of its election technology and software as well as the perception of its security, accuracy, and auditability. A flawless and impenetrable election system is worthless if voters perceive the systems as being corrupt or vulnerable to manipulation.

496. Typically, governments award contracts for voting solutions like those offered by Smartmatic in one of two ways: either a one-off contract which covers only a single election, or a long-term contract running from five to fifteen (or more) years. In both scenarios, however, relationships tend to last for several years: most governments, even those that only offer one-off contracts, tend to renew with their existing solution-provider. In the past ten years, Smartmatic has only lost one contract renewal bid. Nearly every new business opportunity converted into a sale becomes a material, long-term source of revenue for Smartmatic.

497. In addition, nearly every contract has value beyond its base revenue number. As Smartmatic learns the needs of each government client and demonstrates its industry-leading technology and solutions, there are almost always opportunities to provide additional products and services (referred to as "upselling and other upside opportunities").

498. On November 4, 2020, Smartmatic had just executed on its ambitious rollout of U.S. services and solutions through its contract with Los Angeles County. This success validated its existing forecasted revenues and profits, which identified opportunities with expected revenues of not less than $3.1 billion over the next five years.

499. For a company with a long history of client retention, Smartmatic is suddenly being forced to reallocate its resources to prevent its clients from abandoning it *en masse*. Clients are not only worried about the allegations generally but also the risk that whoever loses a Smartmatic-serviced election will use the lies spread by the Defendants to challenge the election results. Due to the need to refocus on client retention, Smartmatic has had to drastically reduce its expected ability to capture new opportunities.

500. Moreover, the disinformation campaign orchestrated and spread by the Defendants has created barriers to new sales that were unimaginable prior to the 2020 U.S. election. It is unclear whether Smartmatic has any real opportunities to capture new business in the United States in the next several years, as client contacts have indicated serious concerns about inviting a scandal or additional fraud allegations due to the disinformation spread by the Defendants.

501. Based on its adjusted forecasts and projections, due to the Defendants' defamation and disparagement, solely for election-related sales, Smartmatic's election business will suffer between $500 million and $690 million in lost profits, based on (i) a forecasted loss of not less than $500 million in profits from base contracts and (ii) lost profits from potential upselling and other upside opportunities, in an estimated amount of not less than $190 million.

502. Specifically, prior to the Defendants' disinformation campaign, Smartmatic was forecasting the following profits related to election technology products and services:[43]

[43] Due to the proprietary nature of Smartmatic's pipeline and the need for confidentiality surrounding its lost profits, these damages are itemized in Appendix 1.A of the Complaint without identifying specific

Region	Opportunities	Unique Client Entities	Original Profit Forecast	Revised Profit Forecast	Lost Profit
Africa	66	33	$107MM	$51MM	$56MM
Asia	92	24	$313MM	$130MM	$183MM
Europe	135	59	$176MM	$107MM	$69MM
North America	72	71	$131MM	$28MM	$103MM
South America	35	33	$123MM	$34MM	$89MM
TOTAL			**$850MM**	**$350MM**	**$500MM**

503. Smartmatic's original projections are now unachievable as a result of Defendants' disinformation campaign. Smartmatic now projects lost profits under the base contracts caused by the Defendants' defamation and disparagement as not less than approximately $500 million. The lost profits related to related upselling and other upside opportunities is estimated to be an additional $190 million. The total lost profits for the Smartmatic elections business line are approximately $500 million to $690 million.

2. Defendants damaged SGO Corporation's other businesses

504. Outside of election solutions, SGO Corporation has already seen government clients pull back from purchasing Airlabs solutions, again citing concerns that any association with Smartmatic poses a risk after the weeks of lies spread by the Defendants. Smartmatic has already adjusted its forecasted Airlabs-related profits downwards by more than $38.6 million for the five-year period ending December 31, 2025.

505. Specifically, prior to the disinformation campaign, Smartmatic was forecasting 34 opportunities to sell Airlabs products[44] with 33 unique client entities in Asia (21 opportunities),

customers. Once an appropriate protective order is in place, Plaintiffs will provide specific details to the Defendants.

[44] Due to the proprietary nature of Smartmatic's pipeline and the need for confidentiality surrounding its lost profits, these damages are itemized in Appendix 1.B of the Complaint without identifying specific customers. Once an appropriate protective order is in place, Plaintiffs will provide specific details to the Defendants.

Europe (7), and South America (6). Those opportunities represented a potential profit of $45.6 million for Smartmatic. Due to the disinformation campaign, the estimated aggregate value of those opportunities is now approximately $15.7 million, representing a loss of approximately $29.9 million in forecasted profits for Smartmatic based on lost sales of Airlabs products.

506. Moreover, sales of Airlabs products by Smartmatic also generate value for SGO Corporation through its ownership of Airlabs. The lost Smartmatic sales would have generated $18.6 million in profit for Airlabs, $8.8 million of which would have flowed to SGO Corporation through its 47.17% ownership of Airlabs. That $8.8 million in profit is now lost to SGO Corporation due to the disinformation campaign.

507. For Folio-related services, SGO Corporation is also seeing pullback and has adjusted its forecasts as well. Specifically, prior to the disinformation campaign, Smartmatic was forecasting 25 opportunities to sell Folio products[45] with 19 unique client entities in Africa (1), Asia (4), Europe (14), North America (2), and South America (4), with an aggregate projected profit of $28.8 million. Due to the disinformation campaign, Smartmatic estimates that the value of those opportunities is now $7.4 million, representing a loss of $21.4 million in forecasted profits.

508. Moreover, sales of Folio products by Smartmatic also generate value for SGO Corporation through its ownership of Folio. The lost Smartmatic sales of Folio products would have generated $17.4 million in profit for Folio. That $17.4 million of profit would have flowed directly into SGO Corporation but is now lost due to the false statements of the Defendants.

[45] Due to the proprietary nature of Smartmatic's pipeline and the need for confidentiality surrounding its lost profits, these damages are itemized in Appendix 1.C of the Complaint without identifying specific customers. Once an appropriate protective order is in place, Plaintiffs will provide specific details to the Defendants.

C. Defendants' disinformation campaign has forced Smartmatic to incur additional and unexpected expenses.

509. In addition to tarnishing the key value propositions of Smartmatic's business, the disinformation invented by the Defendants has led to foreseeable damages and increased costs as Smartmatic attempts to mitigate the harm done to its reputation and products. In total, in the next five years, Smartmatic Elections will suffer damages of not less than $75.9 million in increased expenses and lost productivity due to the defamation and disparagement of the Defendants.[46]

510. For example, the lies spread by the Defendants have expectedly led to people threatening Smartmatic Elections and its personnel. In order to protect its staff, Smartmatic Elections has been forced to incur significant costs to increase physical security for its offices and certain key employees. Smartmatic Elections will pay at least $350,000 per year over the next two years on increased physical security, for total damages of at least $700,000 related to the need for increased physical security.

511. The threats, which are a direct and foreseeable result of the Defendants' claims that Smartmatic stole the U.S. election, have also led to a meteoric rise in cyberattacks on Smartmatic, including phishing and social engineering attacks on Smartmatic Elections personnel. Over the next five years, Smartmatic Elections will incur at least $637,000 in increased personnel costs and $4.1 million in third-party expenses to address the added cybersecurity threat created by the Defendants, for total damages of at least $4.8 million related to the need for increased cybersecurity.

512. Likewise, due to the negative attention and threats, Smartmatic Elections has been forced to invest in additional retention programs, as employees have felt unsafe working for

[46] Due to the need for confidentiality surrounding these increased costs, these damages are itemized in Appendix 1.D of the Complaint without identifying specific vendors and service providers. Once an appropriate protective order is in place, Plaintiffs will provide specific details to the Defendants.

Smartmatic Elections and worry about how it will overcome the challenges created by the Defendants' disinformation. Smartmatic Elections' ability to recruit top talent has also been damaged, as potential employees worry that a connection to Smartmatic Elections may make them undesirable to other election solution providers.

513. Due to these harms, through 2025, Smartmatic Elections will suffer more than $10 million in increased costs associated with personnel recruitment and retention. It will also suffer at least $11 million in lost productivity due to reallocation of personnel to mitigate the damage the Defendants have done to Smartmatic 's reputation, products, and pipeline, for total damages of at least $21 million related to recruitment, retention, and other human resources losses.

514. Finally, Smartmatic Elections has been, and will continue to be, forced to incur significant expenses to correct the disinformation spread by the Defendants and attempt to rehabilitate its reputation. Its public-relations budget has ballooned, and it will incur at least $48 million in additional public-relations expenses through 2025.

D. Defendants' disinformation campaign destroyed SGO Corporation's enterprise value.

515. Prior to the disinformation campaign, SGO Corporation's enterprise value was materially in excess of $2.7 billion, even assuming a modest multiplier. Indeed, Smartmatic Election's five-year pipeline of business opportunities was forecasted at over $3.1 billion in revenue prior to the disinformation campaign. Smartmatic had invested significantly in research and development over the last several years, which set it apart from the competition. Smartmatic also had geographic diversity in its business opportunities that were not matched by its competitors.

516. The November 3 election marked a turning point for the company, but not in the way it should have. Smartmatic's enterprise value peaked after the successful work done in Los

Angeles County and should have continued reaching new heights as Smartmatic continued to execute on its growth plans. Smartmatic was poised to aggressively pursue opportunities in the United States, a new market for the company, and had a growing pipeline and healthy profit margins. Smartmatic was positioned as one of the leading technology innovators in an industry that was booming as more and more jurisdictions adopted electronic voting systems.

517. Today is a different story. Smartmatic's enterprise value is a fraction of what it was as a result of Defendants' disinformation campaign. Today, Smartmatic's reputation and brand have become tainted by the disinformation invented and spread by the Defendants, becoming functionally unsellable and uninvestable. Due to the damage to its reputation caused by the Defendants, Smartmatic cannot deliver the revenue numbers or growth rate that justified past valuations. Some potential partners have already put discussions with Smartmatic on indefinite hold due to the disinformation spread by the Defendants and its effect on Smartmatic's business prospects.

518. Moreover, due to the Defendants' disparagement of Smartmatic's software and other products, the value of its intellectual property and tangible assets has been nearly destroyed. The disinformation campaign has undermined public trust in not just Smartmatic as a company but also the security and reliability of its software and hardware solutions. The same harm has been inflicted on the value of Smartmatic's assets as has been inflicted on its enterprise value, leaving little value beyond liquidation value of tangible assets.

519. Smartmatic Elections alone has suffered at least $2.4 billion in reputational and enterprise value damages due to the disinformation concocted and spread by the Defendants. In addition, Airlabs has suffered at least $224 million in enterprise value as a result of the expected loss of sales (both through Smartmatic and otherwise), resulting in a $105 million reduction in

SGO Corporation's enterprise value through its partial ownership of Airlabs, and Folio likewise has lost another $215 million in enterprise value. For SGO Corporation, the enterprise value of its subsidiaries has been decreased by at least $2.7 billion.

520. Smartmatic sent retraction demand letters to the Defendants before filing this lawsuit. (12/10/20 Retraction Demand Letter for Fox Defendants (Exhibit 77); 12/15/20 Retraction Demand Letter for Mr. Giuliani (Exhibit 78); 12/15/20 Retraction Demand Letter for Ms. Powell (Exhibit 79); 1/28/21 Second Retraction Demand Letter for Fox Defendants (Exhibit 80)). Defendants did not retract their statements and implications.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic Participated in a Criminal Conspiracy to Fix, Rig, and Steal the 2020 U.S. Election)

521. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

522. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic participated in a criminal conspiracy to fix, rig, and steal the 2020 U.S. election. These false statements are pleaded in paragraphs 96-99, 101-105, 107-108, 110-116, 118-129, 149, 157, 166, 175, 183, 191, 199, and 208, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

523. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

524. These statements and implications were false for the reasons stated in paragraphs 146, 152-155, 160-164, 169-173, 178-181, 186-189, 194-197, 202-206, 211-216.

525. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

526. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

527. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

528. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

529. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

530. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

531. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

532. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

533. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

534. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

535. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Widely Used in the 2020 U.S. Election, Including in Contested States)

536. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

537. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were widely used in the 2020 U.S. election including in contested states where claims of election fraud were made.

These false statements are pleaded in paragraph 149, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

538. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

539. These statements and implications were false for the reasons stated in paragraphs 146, 152-155.

540. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

541. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

542. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

543. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

544. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

545. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

546. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

547. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

548. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

549. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

550. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Used to Fix, Rig, and Steal the 2020 U.S. Election)

551. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

552. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used to rig, fix and steal the 2020 U.S. election. These false statements are pleaded in paragraph 166, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

553. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

554. These statements and implications were false for the reasons stated in paragraphs 146, 169-173.

555. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

556. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

557. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

558. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

559. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

560. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

561. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

562. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

563. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

564. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

565. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, AND GIULIANI

(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software Sent Votes Cast in the U.S. to Foreign Countries for Tabulation and Manipulation)

566. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

567. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software sent votes cast in the United States to foreign countries for tabulation and manipulation during the 2020 U.S. election. These false statements are pleaded in paragraph 175, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

568. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

569. These statements and implications were false for the reasons stated in paragraphs 146, 178-181.

570. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

571. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

572. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

573. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

574. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

575. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

576. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

577. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

578. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

579. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

580. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Compromised and Hacked during the 2020 U.S. Election)

581. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

582. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were compromised and hacked during the 2020 U.S. election. These false statements are pleaded in

paragraph 183, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

583. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

584. These statements and implications were false for the reasons stated in paragraphs 146, 186-189.

585. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

586. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

587. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

588. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

589. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or

recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

590. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

591. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

592. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

593. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

594. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

595. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Used by Dominion during the 2020 U.S. Election)

596. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

597. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used by Dominion during the 2020 U.S. election for election fraud. These false statements are pleaded in paragraph 157, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

598. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

599. These statements and implications were false for the reasons stated in paragraphs 146, 160-164.

600. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

601. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

602. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and

unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

603. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

604. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

605. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

606. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

607. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

608. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

609. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

610. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, AND GIULIANI

(Defamation for False Statements and Implications that Smartmatic Had Been Banned in the United States)

611. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

612. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic had been banned from providing election technology and software in the United States. These false statements are pleaded in paragraph 191, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

613. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

614. These statements and implications were false for the reasons stated in paragraphs 146, 194-197.

615. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

616. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

617. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

618. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

619. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

620. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

621. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

622. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

623. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

624. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

625. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic was a Venezuelan Company Founded and Funded By Corrupt Dictators)

626. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

627. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic was a Venezuelan company founded and funded by corrupt dictators. These false statements are pleaded in paragraph 199, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account

the context of each publication. The false implications were also made through the disinformation campaign as a whole.

628. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

629. These statements and implications were false for the reasons stated in paragraphs 146, 202-206.

630. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

631. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

632. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

633. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

634. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

635. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

636. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

637. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

638. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

639. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

640. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

NINTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Designed and Used to Fix, Rig, and Steal Elections)

641. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

642. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online

reports, and on social media that Smartmatic's election technology was designed and used to fix, rig, and steal elections. These false statements are pleaded in paragraph 208, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

643. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

644. These statements and implications were false for the reasons stated in paragraphs 146, 211-216.

645. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

646. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

647. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and because they induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

648. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

649. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

650. Each of these Defendants also acted to deliberately and malicious injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

651. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during their broadcasts and publications.

652. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and defamatory statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

653. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

654. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

655. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

TENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Disparagement for False Statements and Implications that Smartmatic's Election Technology and Software were Widely Used in the 2020 U.S. Election, Including in Contested States)

656. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

657. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were widely used in the 2020 U.S. election including in contested states where claims of election fraud were made. These false statements are pleaded in paragraph 149, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

658. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

659. These statements and implications were false for the reasons stated in paragraphs 146, 152-155.

660. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

661. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

662. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

663. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

664. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

665. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

666. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

667. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

668. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

669. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

ELEVENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Disparagement for False Statements and Implications that Smartmatic's Election Technology and Software were Used to Fix, Rig, and Steal the 2020 U.S. Election)

670. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

671. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used to fix, rig and steal the 2020 U.S. election. These false statements are pleaded in paragraph 166, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

672. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

673. These statements and implications were false for the reasons stated in paragraphs 146, 169-173.

674. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

675. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

676. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

677. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

678. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

679. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

680. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

681. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

682. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

683. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

TWELFTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, AND GIULIANI

(Disparagement for False Statements and Implications that Smartmatic's Election Technology and Software Sent Votes Cast in the U.S. to Foreign Countries for Tabulation and Manipulation)

684. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

685. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software sent votes cast in the United States to foreign countries for tabulation and manipulation. These false statements are pleaded in paragraph 175, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

686. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

687. These statements and implications were false for the reasons stated in paragraphs 146, 178-181.

688. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

689. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

690. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

691. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

692. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

693. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

694. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

695. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

696. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

697. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

THIRTEENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Disparagement for False Statements and Implications that Smartmatic's Election Technology and Software were Compromised and Hacked during the 2020 U.S. Election)

698. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

699. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were compromised and hacked during the 2020 U.S. election. These false statements are pleaded in paragraph 183, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements,

and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

700. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

701. These statements and implications were false for the reasons stated in paragraphs 146, 186-189.

702. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

703. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

704. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

705. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

706. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

707. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

708. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

709. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

710. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

711. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

FOURTEENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Disparagement for False Statements and Implications that Smartmatic's Election Technology and Software Were Used by Dominion during the 2020 U.S. Election)

712. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

713. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used by Dominion during the 2020 U.S. election for election fraud. These false statements are pleaded in

paragraph 157, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

714. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

715. These statements and implications were false for the reasons stated in paragraphs 146, 160-164.

716. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

717. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

718. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

719. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

720. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

721. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

722. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

723. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

724. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

725. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, AND GIULIANI

(Disparagement for False Statements and Implications that Smartmatic Had Been Banned in the United States)

726. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

727. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online

reports, and on social media that Smartmatic had been banned from providing election technology and software in the United States. These false statements are pleaded in paragraph 191, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

728. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

729. These statements and implications were false for the reasons stated in paragraphs 146, 194-197.

730. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

731. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

732. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

733. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast,

published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

734. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

735. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

736. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

737. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

738. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

739. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

SIXTEENTH CAUSE OF ACTION AGAINST DEFENDANTS FOX NEWS, DOBBS, BARTIROMO, PIRRO, GIULIANI, AND POWELL

(Disparagement for False Statements and Implications that Smartmatic's Election Technology and Software were Designed and Used to Fix, Rig, and Steal Elections)

740. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-520 of this Complaint as if fully stated herein.

741. On November 12, 2020, and continuing through December 20, 2020, Defendants published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were designed and used to fix, rig and steal elections. These false statements are pleaded in paragraph 208, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole.

742. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

743. These statements and implications were false for the reasons stated in paragraphs 146, 211-216.

744. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

745. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Defendants.

746. These statements and implications were disparaging because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

747. Each of these Defendants acted with fault, at least negligence, and with actual malice. Each Defendant knew these disparaging statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when they broadcast, published, and republished them. The allegations related to Defendants' actual malice include but are not limited to those pleaded in paragraphs 217-465.

748. Each of these Defendants also acted to deliberately and malicious injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

749. The Fox Defendants also failed to exercise due care to prevent the publication or utterance of these disparaging statements and implications during their broadcasts and publications.

750. Before filing this complaint, Smartmatic provided notice to and demanded that Defendants retract their false and disparaging statements and implications in a comparable time, place, and manner in which they broadcast, published and republished them. Defendants failed to do so.

751. These false statements and implications by Defendants were a substantial factor in causing Smartmatic to suffer loss, and Smartmatic is thus entitled to compensatory damages.

752. As a direct and proximate result of these false statements and implications by Defendants, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

753. Smartmatic is also entitled to punitive damages because Defendants acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

PRAYER FOR RELIEF

754. Wherefore, Smartmatic prays for judgment against Defendants for each of the causes of action raised herein. Smartmatic respectfully requests a judgment in its favor and against Defendants for:

a. Compensatory damages in an amount to be determined at trial;

b. Actual, consequential and special damages in an amount to be determined at trial, but no less than $ 2.7 billion;

c. Punitive damages;

d. Reasonable and necessary attorneys' fees;

e. Reasonable and necessary costs of the suit;

f. Prejudgment and post-judgment interest at the highest lawful rates;

g. Declarative and injunctive relief; and

h. Such other and further relief as this Court deems just and appropriate.

JURY DEMAND

Smartmatic requests a trial by jury on all matters raised herein.

Dated: February 4, 2021

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