



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF MONROE EMPLOYEES'
RETIREMENT SYSTEM, derivatively on
behalf of TWENTY-FIRST CENTURY
FOX, INC.,

Plaintiff,

v.

RUPERT MURDOCH, LACHLAN
MURDOCH, JAMES MURDOCH,
CHARLES G. CAREY, DAVID F.
DEVOE, RODERICK I. EDDINGTON,
ROGER S. SILBERMAN, JACQUES A.
NASSER, JAMES W. BREYER,
JEFFREY W. UBBEN, VIET DINH,
DELPHINE ARNAULT, TIDJANE
THIAME, AND THE ESTATE OF
ROGER AILES,

Defendants,

and

TWENTY-FIRST CENTURY FOX,
INC.,

Nominal Defendant.

C.A. No. _____

VERIFIED DERIVATIVE COMPLAINT

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Proposed Lead Plaintiff City of Monroe Employees' Retirement System ("Plaintiff"), derivatively on behalf of Twenty-First Century Fox, Inc. ("Twenty-First Century Fox" or the "Company") and along with the Additional Plaintiffs (defined below, and together, "Plaintiffs"), brings the following Verified Derivative Complaint (the "Complaint") against Rupert Murdoch, his two sons Lachlan and James, the other members of the Board of Directors of the Company (the "Board"), and the Estate of Roger Ailes ("Ailes") for breaches of fiduciary duty, as well as for unjust enrichment against the Estate of Ailes. Except for allegations specifically pertaining to Plaintiffs and Plaintiffs' own acts, the allegations in the Complaint are based upon information and belief, which include but are not limited to: (i) documents and other information obtained from the Company pursuant to Section 220 of the Delaware General Corporation Law (the "Section 220 Production"); (ii) depositions and interviews conducted by Plaintiffs' Counsel; (iii) the Company's public filings with the United States Securities and Exchange Commission (the "SEC"); (iv) media reports; and (v) other public sources.

Pursuant to Section 220 and Delaware Supreme Court guidelines, counsel for Plaintiff and Defendants entered into a non-waiver agreement to allow Twenty-First Century Fox to provide in the context of this stockholder derivative action certain information that could be subject to claims of attorney-client privilege.

NATURE OF THE ACTION

1. This case arises from the systematic, decades-long culture of sexual harassment, racial discrimination, and retaliation that led to a hostile work environment at Fox News Channel (“Fox News”). That hostile work environment was created and facilitated by senior executives at Fox News. The Board and senior executives of the Company, while moving to enhance governance in 2012 as part of a settlement with the same lead counsel that has appeared in this case, did not take steps to address workplace issues such as sexual harassment and racial discrimination at the same time. They failed to implement controls sufficient to prevent the creation and maintenance of this hostile work environment. The public revelations of the toxic culture since July 2016 have led not only to numerous sexual harassment settlements and racial discrimination lawsuits, but to departures of talent and damage to good will. This, in turn, has caused damage to the Company’s reputation and good will, as well as significant financial harm.

2. The hostile work environment at Fox News claimed multiple victims; revelations in the media since July 2016 as well as internal investigations have identified more than a dozen women who claimed some form of sexual harassment, and another dozen Fox News employees have asserted claims of racial discrimination, and are seeking class certification on behalf of still others. Many of those who have come forward only recently have explained that they were

previously deterred from complaining of their mistreatment by a fear of retaliation. This fear was cultivated as an essential element of the hostile work environment at Fox News.

3. The most infamous perpetrator of sexual harassment at Fox News was Ailes, Chief Executive of Fox News from 1996 through 2016, who sexually harassed female employees and contributors with impunity for at least a decade. Ailes's victims were not limited to low-level employees. Rather, seemingly all women at Fox News were at risk. Ailes's targets included prominent Fox News talent such as Megyn Kelly, Gretchen Carlson, and Rudi Bakhtiar.

4. The culture of sexual harassment conduct at Fox News was not limited to Ailes. Instead, among others, the most prominent on-air talent at Fox News, Bill O'Reilly, also harassed multiple women employees at Fox News. Not only did Ailes set the wrong tone at the top of Fox News, but he surrounded himself with loyalists who were discouraged from disclosing the truth about the work environment at Fox News to Human Resources professionals at the Company.

5. The toxic environment at Fox News should not have been invisible to the Company. Ailes was hired by Rupert Murdoch ("R. Murdoch"), the Chairman and CEO of the Company, after having been implicated in claims of abusive behavior at his prior employer. The Company also shelled out millions of dollars

to “Friends of Roger,” who worked to protect Ailes (even ahead of the Company), including against Ailes’s victims.

6. Moreover, in 2004, Bill O’Reilly was publicly charged with sexual harassment by Andrea Mackris. While O’Reilly was forced to fund the multi-million dollar Mackris settlement personally, neither R. Murdoch, nor the Board, conducted inquiry into what kind of workplace conditions allowed O’Reilly to believe that harassment of Mackris was acceptable.

7. Then, in 2006, the EEOC settled a charge of sexual harassment arising from the behavior of a mid-level Fox News executive. This settlement was reported to the Legal Department of the Company, and it represented another red flag. Again, senior management and the Board did not investigate or remediate the hostile work environment at Fox News.

8. In 2011, Fox News entered a separation agreement with a long-time employee named Laura (“Laurie”) Luhn. Luhn alleged that she had been sexually harassed by Ailes for decades. Neither the Company, nor the Board, had taken the necessary steps to ensure that information about a sexual harassment claim against the CEO of Fox News would be disclosed and assessed by the Company. Senior executives of the Company and the Board failed to implement sufficient oversight over the workplace at this critical business unit to prevent massive damage to the Company.

9. On July 6, 2016, Gretchen Carlson filed a lawsuit against Ailes for sexual harassment and wrongful termination. The filing of her public lawsuit triggered an investigation by the Company and other victims came forward with their own experiences of sexual harassment at Fox News.

10. Given the risk that Ailes was preying on other female employees, among other business considerations, the Company directed an outside law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”), to expedite its investigation with a focus on Ailes’s interactions with female talent at Fox News. In just over one week, Paul Weiss interviewed dozens of women and succeeded in developing sufficient evidence for the Company to remove Ailes from Fox News within 13 days of the Carlson complaint. The investigation was not directed to the entire culture of Fox News and did not expose all of the historic instances of sexual harassment at Fox News. The Company suffered from serial revelations over the year that followed.

11. Ailes’s harassment extended well beyond Gretchen Carlson, including but not limited to women who had confided in Carlson, but chose not to go public. The Company entered into an eight figure settlement with Carlson, and issued a public apology. The Company then proceeded to settle other claims arising from Ailes’s conduct. To date, between settlements for sexual harassment and racial discrimination, the Company has paid over \$55 million.

12. Despite findings of serious wrongdoing that warranted firing Ailes for cause, the Company negotiated Ailes's exit. The Company agreed to pay Ailes \$46 million more than he would have received had he been terminated for cause in exchange for his immediate departure, and a non-compete. The Company has not yet fully addressed the historic culture of harassment, discrimination and retaliation that had taken hold due to years of Ailes's unchecked behavior.

13. Moreover, the Company left in place some of Ailes's loyalists, securing long-time employee and recent Co-President of Fox News, William ("Bill") Shine's ("Shine"), departure only in May 2017. The Company also took months to come to grips with Bill O'Reilly's history of harassment, securing his departure in April 2017, after an advertising boycott and public revelations in the *New York Times* that injured Fox News. And the losses to the Company that flowed from the historic wrongdoing have only mounted. Talent such as Megyn Kelly and Greta Van Susteren left Fox News in 2016.

14. The Company has also incurred the expense of an investigation by the United States Attorney's Office for the Southern District of New York, focusing in part on the reporting and disclosure of the Luhn sexual harassment settlement. And the Company's attempt to acquire the balance of Sky, a European pay-tv platform, is in serious jeopardy, as opponents of the acquisition have cited sexual harassment and racial discrimination issues at Fox News as grounds for further

investigation and delay of the transaction. All of this has already imposed expense and caused damage to the Company, and threatens ongoing significant harm.

15. The hostile work environment that was left unaddressed for years also included racial discrimination. In March 2017, Fox News Comptroller Judith Slater (“Slater”) was alleged to have inflicted racially charged abusive language on her subordinates at the network. While Slater has been terminated, Fox News now faces a dozen lawsuits and a class action. Again, the allegations include charges that other Fox News executives enabled or failed to control Slater. Regardless of the outcome of the lawsuit, Fox News has already been damaged, along with the Company’s reputation and good will.

16. Neither the Company’s senior management nor its Board met its fiduciary duty to monitor developments at its most important business unit, investigate when red flags appeared, or put in place protocols that would have ensured greater visibility into the hostile work environment at Fox News. Their breaches helped ensure that the toxic culture created by Ailes only festered, and the resulting damage to the Company has been profound. Plaintiffs seek judicial intervention to hold Defendants accountable and to impose reforms to end the misconduct.

PARTIES

A. PROPOSED LEAD PLAINTIFF

17. Proposed Lead Plaintiff City of Monroe Employees' Retirement System ("Plaintiff") is a current stockholder of the Company and has held Company stock since January 2014. On July 29, 2016, Plaintiff served a demand to inspect the books and records of Twenty-First Century Fox pursuant to Section 220 of the Delaware General Corporation Law relating to Fox News.

B. ADDITIONAL PLAINTIFFS

18. Additional Plaintiff Seattle City Employees' Retirement System is a current stockholder of the Company and has held Company stock since January 2010.

19. Additional Plaintiff Henry Zwang is a current stockholder of the Company and has held Company stock since July 2013.

20. Additional Plaintiff Chaile Steinberg is a current stockholder of the Company and has held Company stock since July 2013.

21. Additional Plaintiff IBEW Local 38 Pension Fund is a current stockholder of the Company and has held Company stock since July 2013.

22. Additional Plaintiff Simcha Halberstam is a current stockholder of the Company and has held Company stock since 2015.

23. Additional Plaintiff MSS 12-09 Trust is a current stockholder of the Company and has held Company stock since May 2010.

C. NOMINAL DEFENDANT

24. Nominal Defendant Twenty-First Century Fox, Inc. (“Twenty-First Century Fox” or the “Company”) is a Delaware corporation, with its principal offices located in New York, NY.

D. THE INDIVIDUAL DEFENDANTS

25. Rupert Murdoch (“R. Murdoch”) has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 1979. R. Murdoch is the founder of News Corp. and controlling stockholder of Twenty-First Century Fox.

26. Lachlan Murdoch (“L. Murdoch”) is the son of R. Murdoch and the brother of James Murdoch. L. Murdoch has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 1996 and as Executive Chairman since July 2015.

27. James Murdoch (“J. Murdoch”) is the son of R. Murdoch and the brother of L. Murdoch. J. Murdoch has been a director of the Company since 2007 and its CEO since 2014. J. Murdoch has held a variety of leadership roles over nearly 20 years at Twenty-First Century Fox, which include serving as Co-Chief Operating Officer (“COO”) from 2014 to 2015.

28. Charles G. (“Chase”) Carey has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 2009,

and was formerly the President and Chief Operating Officer of News Corp. and Twenty-First Century Fox.

29. David Francis DeVoe has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 1990. DeVoe was formerly the Senior Executive Vice President and Chief Financial Officer of Fox Entertainment Group, Inc., and is currently a Senior Advisor of the Company.

30. Roderick I. Eddington has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 1999 and as the Lead Director since 2006.

31. Robert S. Silberman has served as a member of the Board of Twenty-First Century Fox since 2013.

32. Jacques A. Nasser has served as a member of the Board of Twenty-First Century Fox since 2013.

33. James W. Breyer has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 2011.

34. Jeffrey W. Ubben has served as a member of the Board of Twenty-First Century Fox since 2015.

35. Viet D. Dinh has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 2004.

36. Delphine Arnault has served as a member of the Board of Twenty-First Century Fox since 2013.

37. Tidjane Thiam has served as a member of the Board of Twenty-First Century Fox since 2014.

38. Roger Ailes (“Ailes”) served as Chief Executive Officer and Executive Chairman of Fox News Network, LLC from 1996 to July 2016. Ailes died on May 18, 2017; claims against him are asserted against his Estate.

39. The Defendants described in Section II.D above are collectively referred to herein as the “Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

I. THE CULTURE OF SEXUAL HARASSMENT AT FOX NEWS

A. THE DECADE-LONG HISTORY OF SEXUAL HARASSMENT AT THE COMPANY

40. There have been over a dozen instances of sexual harassment at Fox News since at least 2004. These incidents are not the product of rogue employees, but rather evidence of a culture of sexual harassment being carried out by executives and employees at the highest levels. This behavior was insulated from scrutiny by a pattern of intimidation directed at victims. Women often remained quiet out of a fear of retaliation.

1. Ailes Harasses A Student Intern And Another Fox News Employee

41. The first known instance of sexual harassment involving Ailes at Fox News occurred in May 2002. A 20-year old college student received an internship at Fox News in the accounting department, but to her surprise she was assigned to work for Ailes. The woman fit the profile of a future Fox News standout: attractive and blonde. Almost immediately after beginning her internship, Ailes reportedly asked her to get him a copy of Maxim, the racy men's magazine. When she gave Ailes the magazine, she remembers him saying, "There are some great articles in here. And you're pretty enough to be in here. You look like the women in here. You have great legs. If you sleep with me, you could be a model or a newscaster."

42. Ailes's harassment persisted on a daily basis even after she turned him down. As a result of the harassment, she decided to leave Fox News. As she explained, "When I told him I was leaving, he said he was sorry I was leaving and that he was really disappointed that I didn't sleep with him." Ailes then proceeded to grab her buttocks on the way out.

43. A similar pattern appears in the allegations of another former Fox News employee, who says she was harassed by Ailes in 2004. The woman (whose identity is anonymous) described how Ailes suggested the two have a drink alone at a hotel. Ailes asked her, "Do you know how to play the game?" He

continuously tried to kiss and grope her. As a result, the woman said she was traumatized and could not sleep. When the woman rebuffed Ailes's advances, her professional development opportunities disappeared.

2. Mackris Accuses O'Reilly Of Sexual Harassment And The Company Protects Him

44. The culture of sexual harassment at Fox News began to make it into the public sphere by October 2004, when Andrea Mackris, the producer of The O'Reilly Factor, filed a sexual harassment lawsuit against O'Reilly. The lawsuit alleged that O'Reilly spoke to Mackris about sexual fantasies, masturbation, and sex toys while seeming to pleasure himself. Mackris further alleged that O'Reilly threatened her, saying he would make any woman who complained about his behavior "pay so dearly that she'll wish she'd never been born."

45. O'Reilly also invoked Ailes, further threatening Mackris:

If you cross Fox News Channel, it's not just me, it's Roger Ailes who will go after you. I'm the street guy out front making loud noises about the issues, but Ailes operates behind the scenes, strategizes and makes things happen so that one day BAM! The person gets what's coming to them but never sees it coming.

46. O'Reilly settled the lawsuit soon thereafter, and O'Reilly agreed to pay a reported high seven-figure sum to Mackris.

47. Fox News and O'Reilly first sought to pre-emptively silence Mackris by filing a lawsuit of their own. The pre-emptive suit asserted that Mackris was seeking to extort \$60 million in return for not going public with "scandalous and

scurrilous” claims about O’Reilly. Such filings were plainly designed to (and did) suppress legitimate complaints and foster the culture of sexual harassment and intimidation at Fox News.

3. The EEOC’s Sexual Harassment Suit Against Joe Chillemi

48. Shortly after the first O’Reilly sexual harassment scandal, in November 2005, the U.S. Employment Equal Opportunity Commission (“EEOC”) filed a sexual harassment suit on behalf of Kim Weiler and three colleagues claiming that Fox News Vice President Joe Chillemi used obscene terms to describe women and their body parts. The lawsuit also claimed that Fox News retaliated against Kim Weiler after she complained about her superiors’ harassment. Fox News agreed to pay \$225,000 to settle the EEOC lawsuit. The Legal Department at the Company was made aware of this settlement on July 28, 2006, when Brandi (General Counsel of Fox News) forwarded them a copy of the settlement.

4. More Sexual Harassment Involving Ailes

49. Ailes also continued to sexually harass women at Fox News. In December 2006, Fox News settled a sexual harassment complaint with an undisclosed employee for \$105,000. The settlement agreement specifically prohibits the undisclosed employee from disparaging Ailes and Laurie Luhn, a Fox News Booking Agent who reported directly to Bill Shine.

5. Rudi Bakhtiar Alleges Sexual Harassment By Ailes

50. Rudi Bakhtiar, a general correspondent at Fox News, alleged sexual harassment by Ailes, followed by retaliation.

51. Among other incidents, when Bakhtiar first interviewed at Fox News in 2005, Ailes asked Bakhtiar to stand up so he could see her legs. Later, in 2007, Bakhtiar was propositioned by her colleague Brian Wilson to have a sexual relationship with him in return for a promotion. Immediately afterwards, Bakhtiar informed then-manager Shine of the incident and though she feared reprisal, she filed a formal complaint. Bakhtiar's fears were realized when she received fewer opportunities at work and was subsequently terminated by Ailes.

52. Despite Bakhtiar being an excellent correspondent, Ailes said that she was being fired for poor reporting. Needless to say, such a harsh review from a person of Ailes's stature can do irreparable harm to a young woman's career – but it can also warn other sexual harassment victims of the consequences of speaking up.

53. On July 5, 2007, Bakhtiar's lawyer sent a letter to Fox News alleging that Bakhtiar had been subject to unlawful treatment and termination, citing a hostile environment of sexual harassment, quid pro quo sexual harassment, and retaliation. Subsequently, Bakhtiar entered into confidential mediation, during which time, consistent with Ailes's false justification for her termination, Shine

attempted to portray Bakhtiar as a low-performing journalist. Ultimately, Fox News agreed to settle Bakhtiar's claims of wrongful termination and sexual harassment for \$675,000 plus legal fees.

6. Juliet Huddy Alleges Sexual Harassment By O'Reilly

54. Like Ailes, O'Reilly also continued to pursue unwanted sexual relationships with his female colleagues and retaliate when they refused. In 2011, O'Reilly began harassing a fellow on-screen host named Juliet Huddy ("Huddy"). This was the second such incident implicating O'Reilly within a five year period. According to Huddy, O'Reilly called her repeatedly while she believed he was masturbating, invited her to his house and a hotel room, and tried to kiss her.

55. After Huddy rebuffed O'Reilly's advances, O'Reilly retaliated against her professionally by berating her for minor mistakes and canceling scheduled appearances on his show. The Company reportedly settled Huddy's informal complaints outside of litigation in September 2016.

56. Moreover, Huddy, like many other victims of sexual harassment at Fox News, faced veiled threats and obvious intimidation in the days leading up to her decision to seek redress. O'Reilly has settled a total of five potential lawsuits for \$13 million as a result of sexual harassment.

7. Fox News Quietly Settles Additional Sexual Harassment Lawsuits

57. Fox News continued to quietly settle additional sexual harassment lawsuits from 2007 through 2009. When viewed in the totality with the sexual harassment claims discussed above, these allegations paint a dark picture of the rampant culture of sexual harassment at Fox News. Among other disturbing incidents, work assignments were allegedly conditioned on sex. The women who were harassed were reluctant to go to the Human Resources Department with their complaints out of fear that they would be fired.

B. THE MISTREATMENT OF LAURA (“LAURIE”) LUHN

58. One of the most egregious examples of Fox News’s sexual harassment culture is that Ailes sexually harassed Laura (“Laurie”) Luhn (“Luhn”) for two decades.

59. The harassment began in the fall of 1990, years before Ailes was employed by Fox News, when Ailes asked Luhn to come to his Washington office at Ailes Communications, ostensibly for an interview. Luhn brought her resume to the meeting, which reflected that her last position at the George H.R. Bush campaign was “office manager.” After first informing Luhn that they already had an office manager, he asked Luhn a series of personal questions in order to ascertain whether she was insecure or as Luhn described it, “looking for a daddy figure.” Ailes asked Luhn to go out to dinner and drive him to the airport. At

dinner, Luhn told Ailes that she was panicked about her finances, rendering her more vulnerable to Ailes's advances. That same night, Ailes kissed Luhn and handed the then-unemployed Luhn several hundred dollars.

60. Following this encounter, Ailes called Luhn and offered to put her on a \$500 monthly retainer to do "research." In reality, Luhn was paid to meet with Ailes when Ailes was in Washington. While Luhn hoped to learn from Ailes about working with political candidates and advertising, it quickly became clear that Ailes's intentions were much different.

61. On January 16, 1991, Ailes instructed Luhn to meet him at his suite at the Crystal City Marriot where he sexually harassed her. Ailes later used the tapes of this incident to threaten and blackmail Luhn, telling her that he was going to put the tapes "in a safe-deposit box just so we understand each other."

62. Following this initial encounter, Luhn frequently met Ailes for similar episodes. All the while, Ailes continued to string Luhn along by making false promises of employment. In 1993, when Ailes became president of CNBC, he pretended that he might give Luhn an on-air job. As Luhn explained, she did not get a job, but the sexual harassment continued.

63. In the spring of 1996, Ailes began working on the launch of Fox News and decided to bring Luhn over to the network. Luhn became a "guest relations" staff member on Fox News Sunday.

64. While at Fox News, Ailes's harassment of Luhn continued and escalated, with the direct involvement of Shine. Ailes and Luhn continued to meet in hotels, and Ailes would summon Luhn to New York for sexual encounters. The code for such encounters was a "booking meeting." As Shine has admitted, Shine would personally call Washington bureau chief Kim Hume and tell her there was a "booking meeting" in New York that Luhn needed to attend. According to Luhn, "[i]t was always the on-my-knees, hold-my-temples routine."

65. With regard to her colleagues at Fox News, Luhn stated, "They all knew there was quid pro quo."

66. According to Luhn, Ailes's harassment became more frequent after Luhn started reporting directly to Shine. In 2006, Ailes regularly demanded that Luhn provide phone sex in the office, and instructed her to recruit other young women for him, whom he referred to as "Roger's Angels" and "whores." To facilitate this, Ailes promoted Luhn to Director of Booking, which enabled her to hire employees. Ailes instructed her to only hire attractive people. Luhn would send these recruits into private meetings with Ailes so he could sexually harass them. As noted above, Luhn herself was named in a December 22, 2006 settlement agreement with one of these recruits.

67. In the winter of 2007, Ailes moved Luhn to a position in event planning, which a senior Fox News executive acknowledged was a "fake job." A

few days later, Luhn suffered a mental breakdown on her way to Mexico. Shine personally arranged for Luhn to travel back to Texas, her home state.

68. On or around April 2011, Shine and Brandi sought recommendations from another medical professional for the name of a qualified psychiatrist to assist Luhn. Brandi was negotiating a separation agreement for Luhn that would pay for her relocation and medical care.

69. On April 17, 2011, Luhn wrote an email to Brandi describing the nearly two decades of sexual harassment and psychological torture that she suffered at the hands of Ailes. In that email, Luhn wrote (emphasis in original):

While at Fox News, I have endured almost 15 years of sexual harassment and blackmail from Roger Ailes. I have discussed this with Dr. Milam. It has been a great release to rid those toxins from my mind and body. I kept that secret because Ailes ordered me to do so. He threatened me constantly and said that **he owned me**. I will spend my medical leave coping with that trauma. Roger Ailes explicitly ordered me to **not** ever tell the psychiatrist I was seeing in Washington about the sick existence in which I was trapped. Thus, the constant trauma has almost ruined my life.

70. Ailes told Brandi to enter a separation agreement with Luhn. On June 15, 2011, after an extensive negotiation process, Brandi, on behalf of Fox News, and Luhn signed a settlement agreement and release. The agreement provided for payments to Luhn totaling \$3.151 million. Luhn's lawyer expressly requested that Luhn receive indemnification against any future claims brought against her by Fox News employees. This request suggests that Luhn feared potential liability for

luring unknowing women to Ailes so he could sexually harass them. The agreement also included a supplemental general release signed on June 14, 2011 by both Ailes and Shine.

II. GRETCHEN CARLSON PUBLICLY REVEALS FOX NEWS'S CULTURE OF RAMPANT SEXUAL HARASSMENT

A. CARLSON SUES AILES FOR SEXUAL HARASSMENT AND WRONGFUL TERMINATION

71. On July 6, 2016, Gretchen Carlson, former co-host of the highly-rated “Fox & Friends” morning show, sued Ailes for sexual harassment and wrongful termination. *See Carlson v. Ailes*, Civ. L-5016-16 (N.J. Super. Ct. July 6, 2016). Carlson’s lawsuit revealed to the world that there was a systematic culture of sexual harassment at Fox News and intimidation of anyone who sought to complain or challenge Ailes’s misconduct.

72. Carlson’s complaint detailed a pattern and practice of sexual harassment by both Ailes and her co-host, Steve Doocy. When Carlson complained to Ailes about Doocy’s behavior in 2009, he called her a “man hater” and told her to “get along with the boys.” Ailes also told her, “I think you and I should have had a sexual relationship a long time ago and then you’d be good and better and I’d be good and better [S]ometimes problems are easier to solve [that way].” Carlson further alleged that Ailes stared at her, “asking her to turn around so he could view her posterior,” requested that she wear certain outfits

every day that Ailes said enhanced her figure, and commented repeatedly about her legs.

73. When Carlson refused Ailes's sexual advances, he sabotaged her professionally, outright terminating her from "Fox and Friends," despite her contribution to the show's high ratings. Carlson was reassigned to a solo midday slot on the network, where she saw her compensation slashed. Several years later, Ailes decided not to renew her contract, leading to her termination on June 23, 2016. The Company paid Carlson an eight figure sum to settle the lawsuit and issued a rare public apology to her. In suing Ailes, but not Fox News, Carlson avoided the forced arbitration provision that would have kept her complaint from public disclosure.

B. OTHER VICTIMS EMERGE

74. Following the filing of Carlson's lawsuit, more than a dozen women were contacted by Paul Weiss or otherwise came forward to report instances of sexual harassment and retaliation by Ailes at Fox News, spanning decades.

75. Notably, Megyn Kelly ("Kelly"), then one of Fox News's leading television personalities, detailed her harassment by Ailes. Ailes began harassing Kelly in the summer of 2005 while she was in the midst of a divorce. At first, Ailes started introducing "explicit sexual innuendo" into their conversations. For

example, Ailes made inappropriate sexually charged comments about Kelly owning lingerie and how he would love to see her in it.

76. Over the next six months, Ailes's remarks got more frequent, and more direct. In fact, Ailes made Kelly offers of professional advancement in exchange for sexual favors, which she rejected.

77. In January 2006, Ailes crossed a new line during a one-on-one meeting with Kelly. Specifically, Ailes tried to grab Kelly repeatedly and kiss her on the lips. Kelly dodged the first two attempts, pushed him away, and immediately tried to leave Ailes's office. As Kelly walked away from Ailes, he followed Kelly and asked her an ominous question: "When is your contract up?" Ailes then tried to kiss Kelly for a third time, which she dodged again and walked out.

78. After this incident, Kelly was "upset, rattled, and angry," but felt she had no options. In this regard, Ailes had told Kelly that "I don't like to fight, but when I do fight, I fight to kill." The message was very clear to Kelly (and many other Ailes victims), that if she made an issue about Ailes's behavior, he would destroy her. Kelly shared her experience with the attorneys from Paul Weiss.

79. The Company settled several other serious sexual harassment complaints involving Ailes, paying millions of dollars to victims. The Company

has paid over \$55 million to settle sexual harassment and discrimination complaints to date.

III. THE COMPANY'S INCOMPLETE RESPONSE TO THE REVELATIONS OF SEXUAL HARASSMENT

A. SENIOR MANAGEMENT DECIDES NOT TO FIRE AILES FOR CAUSE

80. By July 18, 2016, senior management of the Company decided to oust Ailes. The full Board was not advised of this decision until after-the-fact.

81. Ailes's employment was governed by an Amended and Restated Employment Agreement (the "Employment Agreement") dated July 1, 2015. Section 8(c)(i) of the Employment Agreement states that the Company could terminate Ailes's employment "for cause" if he engaged in conduct that constitutes "willful gross neglect or willful gross misconduct in carrying out his duties under this Agreement, resulting, in either case, in harm to the Company[.]"

82. Given the fact that Ailes engaged in a decades-long pattern of sexual harassment that caused the Company to pay millions of dollars to settle various lawsuits, the Company clearly could have terminated him for cause. Indeed, Ailes attempted to intimidate and silence one of his victims while the Paul Weiss investigation was ongoing. This was itself alone a sufficient basis to terminate Ailes for cause.¹

¹ Notably, after his separation, Ailes continued to contact former Fox News employees hoping to intimidate and silence them. Ailes's attorney left a message

83. Section 8(c)(iii) of the Employment Agreement states that, if the Company terminated Ailes for cause, he would only be entitled to receive his base salary through the date of termination, any annual bonus payable but not yet paid for already completed fiscal years, and the benefits he was entitled to under the Company's supplemental executive retirement plan and individual supplemental retirement plan. Instead of terminating him for cause and providing Ailes just the fully vested payments to which he would have been entitled, senior management decided, without Board input, to give Ailes tens of millions of dollars of the Company's money.

84. Under the terms of the Separation Agreement, the Murdochs agreed to provide Ailes the following benefits that he would not have received had he been terminated for cause: (i) his base salary of \$6.25 million per year through June 30, 2018; (ii) a payment of \$23.5 million within ten days after the Company released its earnings for the fiscal year ending June 30, 2017; (iii) at least \$11.2 million in Class A common shares and a cash top-up payment to be paid by July 15, 2017; (iv) indemnification for legal costs and damages arising from lawsuits, which resulted in the Company paying \$20 million to settle the Carlson lawsuit despite the fact that it was not even named as a defendant therein; (v) lifetime medical,

for Rudi Bakhtiar's lawyer: "He said he heard that I have an interview with Gabe Sherman [a reporter for New York Magazine]. His message said that, 'If so, you violated the non-disparagement agreement.'"

dental, disability, and life insurance; (vi) health and welfare benefits for his wife and dependents after his death; and (vii) six months of security services. In return, the Company avoided a wrongful discharge case in which various female victims who sought anonymity would have been witnesses, and secured a non-compete. Ailes had also threatened to encourage other talent to exercise the key man provisions in their contracts and leave with him.

85. But Fox News never should have been in a position where (i) it was facing a wrongful discharge case due to Ailes's misconduct; (ii) Ailes was threatening victims of his harassment; and/or (iii) Ailes could have triggered key man clauses and the departure of critical talent. In effect, Ailes's departure package was driven by a potential liability that the Company and the Board should have avoided with closer scrutiny of the contracts entered between Fox News and key talent. Here, again, the Company and its shareholders paid for the Board's and senior officers' lack of attention to the operations of Fox News.

B. THE BOARD IS ONLY UPDATED AFTER-THE-FACT

86. On July 21, 2016, the day after Ailes entered into his Separation Agreement and resigned, the full Board was briefed on the Paul Weiss investigation. The Board learned that the Company had hired outside counsel to conduct a privileged inquiry. The Board also understood that several women reported on various forms of sexual harassment over the last 10 years, including

those well known to Carlson's attorneys because they had commiserated with her some time ago (which meant they would be targeted for testimony by Carlson to counteract Ailes's argument that Carlson made up her account only recently in response to losing her job). It became clear that Ailes had acted repeatedly in violation of the Company's Standards of Business Conduct.

87. At its next regularly scheduled meeting on August 3, 2016, the Board received a further presentation regarding the scope and findings of the Paul Weiss investigation and Ailes's Separation Agreement.

C. SENIOR MANAGEMENT REPLACES AILES WITH SHINE

88. In mid-August 2016, senior management appointed Shine and Jack Abernethy as Co-Presidents of Fox News. The appointment of Shine as Co-President to replace Ailes despite allegations that Shine, as one of Ailes's top lieutenants, knew about and was directly involved in Ailes's sexual harassment, was a clear signal to the Company's female employees that it was just business as usual and they could not expect the Company to take decisive action to alter the hostile work environment.

89. Following numerous other scandals and secret sexual harassment settlements stretching back over a decade involving O'Reilly, and a class action racial discrimination lawsuit, Shine tendered his resignation on May 1, 2017.

D. THE FAILURE TO FULLY INVESTIGATE O'REILLY UNTIL EARLY 2017

90. In response to Carlson's allegations, management at the Company directed an investigation focused on Ailes's relationships with female talent. Senior management did not direct a broader investigation of others such as O'Reilly until after O'Reilly had been signed to a new contract, and after the *New York Times* reported on multiple allegations of sexual harassment against O'Reilly.

91. Instead, management, with the Board's consent, negotiated an extension of O'Reilly's contract in February 2017. The extended O'Reilly contract reflected that there had been prior allegations against O'Reilly and settlements. Within two months, the *New York Times* published a lengthy article detailing allegations against O'Reilly which led to an advertiser boycott.

92. Given O'Reilly's history of harassment, after Ailes's departure in the summer of 2018, the Board and management should have investigated O'Reilly. An investigation of O'Reilly would have led Fox News to exit O'Reilly before his contract was extended and before the advertising boycott in April 2017.

93. Given the prior incidents involving O'Reilly, the Carlson suit, and the Paul Weiss review, a more expansive investigation of sexual harassment at Fox News should have been directed. That investigation would have confirmed that the hostile work environment issues went beyond Ailes.

E. SEXUAL HARASSMENT LAWSUITS CONTINUE TO THE PRESENT

94. Both Ailes and O'Reilly have a pattern of engaging in sexual harassment of employees and on-air personalities. After the conclusion of the Paul Weiss investigation of Ailes, additional allegations broke regarding sexual harassment by both Ailes and O'Reilly at Fox News. As detailed below, the Company has settled some of these cases and is litigating others.

1. More Allegations Of Sexual Harassment Against Ailes And O'Reilly

95. On January 3, 2017, the Company learned about allegations that O'Reilly had sexually harassed Lis Wiehl, and shortly after that learned that O'Reilly had personally paid to settle the matter. The Board discussed these allegations during February 2017 Board meetings, and determined to revise and extend O'Reilly's contract, as described in Section V.E.2 below. The Board did not know the dollar amount of the settlement.

96. On April 1, 2017, the *New York Times* published an article detailing two additional undisclosed settlements and complaints of sexual harassment carried out by O'Reilly that led to settlements. These involved conduct before 2008 and in 2011. The Company knew about the allegations in the *Times* article almost a week before it was published, because it was asked to provide comment.

97. Rebecca Gomez Diamond, a host on Fox Business Network, told Fox News that she had recordings of several conversations evidencing O'Reilly's

sexual harassment dating from 2011. After Diamond was told that Fox News would not be renewing her contract, Diamond's lawyers reported the sexual harassment to Fox News and outlined her complaints against O'Reilly. As a result, Diamond received an undisclosed settlement and was required to sign a confidentiality agreement.

98. Laura Dhue, a Fox News anchor from 2000 to 2008, had her lawyers approach the Company in 2016 following the filing of Carlson's lawsuit. Her lawyers outlined her sexual harassment claims against O'Reilly and Ailes. In response, the Company reached a settlement with her for over \$1 million.

99. Multiple other women spoke out about O'Reilly's inappropriate behavior in the workplace in the *New York Times* article. For instance, Wendy Walsh, a Fox News contributor, publicly described how, after she rebuffed an advance from O'Reilly in 2013, he did not follow through on a verbal offer to secure her a lucrative position at Fox News. Pamela Burgess has also detailed how O'Reilly leered at her and called her "hot chocolate." In addition, Andrea Tantaros and Julie Roginsky have alleged sexual harassment involving O'Reilly and/or Ailes.

100. Rather than show some remorse for his actions, O'Reilly continued to paint himself as a victim who is "vulnerable to lawsuits from individuals who want me to pay them to avoid negative publicity." He justified his innocence by stating

that “no one has ever filed a complaint about [him] with the Human Resources Department, even on the anonymous hotline.”

101. As alleged herein, O’Reilly’s victims did not report sexual harassment before the Carlson case in July 2016 due to the pervasive culture of retaliation at Fox News.

2. Fox Gave O’Reilly Contractual Protection For Sexual Harassment

102. In addition, Fox News’s contracts with O’Reilly’s production company provided protection against termination for sexual harassment. These contracts, which cover 2012 through 2017, stated that O’Reilly could be terminated only for cause. However, “‘Cause’ involving harassment is expressly limited to a final, non-appealable judgment by a court of law finding that Performer sexually harassed an employee of Fox.” This means that as long as O’Reilly could either intimidate the woman into not filing a civil lawsuit, or settle with her if she did, O’Reilly could not be terminated for sexual harassment, even if the Company determined that it occurred.

103. On March 2, 2017, the Company extended O’Reilly’s contract and amended it to provide him with more compensation. The 2017 amended contract also acknowledged the growing concerns about O’Reilly by giving Fox News the right to terminate O’Reilly if “there is any published report of the Performer engaging in inappropriate conduct with any female employee or contributor of Fox

which reports include material about a female employee or contributor about whom there has not already been a published report prior to the Effective Date relating to such conduct, and . . . such published report has a negative impact on the public reputation of Fox and/or Performer[.]”

3. A Second Paul Weiss Investigation Into Sexual Harassment At Fox News

104. As of April 9, 2017, the Company again hired Paul Weiss to conduct a targeted investigation into the sexual harassment claims against O’Reilly. Moreover, as with Ailes, the Company once again conducted a narrow investigation into one man – this time, O’Reilly – instead of an appropriately broad investigation into the systematic culture of sexual harassment at Fox News.

4. Senior Management Negotiates O’Reilly’s Exit Only After Facing Public Pressure And Losing Advertisers

105. Only after facing an unprecedented advertiser revolt, as described below, with a reported sixty (60) or more pulling advertising from Fox News and/or O’Reilly, did the Company negotiate an exit for O’Reilly. Had senior management and the Board investigated O’Reilly’s behavior back in 2004 when the first public allegations were made against him, and taken appropriate action, the Company may never have faced the loss of its most significant talent, or the injury to reputation and good will that followed O’Reilly’s belated exit in 2017.

5. Women Continue To Speak Out About Sexual Harassment And Retaliation By Other Fox Executives

106. Throughout 2017, women continued to speak out about sexual harassment and retaliation by Fox executives other than Ailes. Fox News continued to take no action until these incidents became public.

107. On May 4, 2017, Jessica Golloher (“Golloher”), a Fox News Radio correspondent, sued Fox News in New York State Court for sex discrimination and retaliation. Golloher alleged that she had suffered demeaning treatment and been passed over for reporting opportunities by her male colleagues.

108. Weeks later, on July 18, 2017, news broke that in 1998, David Hill, who ran Fox Sports, had sexually harassed Paula Radin, a vice president at Fox Broadcasting. Hill was reportedly “part of Fox Chief Rupert Murdoch’s inner circle” and was promoted the same year that his victim was silenced and paid off.

109. Another former Fox News contributor, Caroline Heldman, recently accused Woody Fraser, a Fox News Executive Producer and “top lieutenant” to Ailes, of persistent sexual harassment that took place several years ago. Heldman’s supporting affidavit details how Fraser made clear to her on multiple occasions that he would help further her career if they engaged in a sexual relationship. Heldman further describes how she personally observed Fraser’s sexually inappropriate interactions with other women in the workplace.

110. In addition, Fox Business News Network host Charles Payne (“Payne”) was suspended while the Company investigated sexual harassment allegations made against him. That employee has now filed a complaint in the United States District Court for the Southern District of New York alleging that Payne raped her in 2013, and that she was retaliated against after she came forward.

F. RACIAL DISCRIMINATION AT FOX NEWS

111. The Company’s practice of tolerating racial discrimination and retaliating against those who complained eerily parallels its sexual harassment culture. As detailed below, multiple individuals have now come forward with accounts of the pervasive racial discrimination culture at Fox News.

1. Discrimination In The Fox News Hair And Makeup Department

112. In the months following Ailes’s departure, Fox News faced race and sex discrimination lawsuits or EEOC complaints from minority women in its Hair and Makeup Department. Lena Jemmott (“Jemmott”), a Black Muslim woman, was fired after working for six years at Fox News without any complaints having been lodged against her, after a man in her department, Bradley Stenson (“Stenson”), made threatening gestures toward her. Her male supervisors then engaged in an internal investigation against Jemmott, and she was suddenly subject to complaints that she was a “loose cannon” and “a ticking time bomb.”

113. Jemmott's colleague, Hilda Correa-LaPolla, was also terminated a mere 20 days after she lodged a complaint in Human Resources against Stenson. Stenson repeatedly called female colleagues "bitches" and "girls," made threatening gestures against Jemmott, and showed an inappropriate video to Jemmott, Walsh, and Kimberly Guilfoyle (co-host of the Five). Yet, Stenson suffered no disciplinary consequences or even a warning. Jemmott's claim was taken into mediation in September 2016; Correa-LaPolla and Walsh sued in New York State Court in December 2016.

2. Fox News Comptroller Slater Is Sued For Racial Discrimination In New York State Court

114. As with the sexual harassment scandal, the racist behavior at Fox News was by no means limited to low or mid-level personnel. On April 4, 2017, a lawsuit filed in New York State Court revealed rampant racism among Fox News's officers and talent.

115. Specifically, administrative employees Tichaona Brown, Tabrese Wright, and Monica Douglas sued Fox and Slater, the company's longtime comptroller, alleging various incidents of racial discrimination by Slater. Among other things, Slater made many disparaging comments about blacks and other minorities, refused to fill out evaluations for and give promotions to black employees, and paid white employees more for the same work that black employees did.

116. Slater was fired in February, 2017. Slater allegedly could avoid accountability for years because of her deep knowledge of Fox News's sexual harassment problem. The complaint alleges that in mid-2015, Brandi explained to Slater's victim, Douglas: "'Slater will not be fired because she knows too much,' referring to Slater's knowledge regarding improprieties committed by [Ailes] and former Fox News CFO Mark Kranz."

3. Anchor Kelly Wright Comes Forward With Racial Discrimination Allegations Against O'Reilly

117. On April 25, 2017, Kelly Wright ("Wright"), a black television anchor, and a class of other minority employees at Fox News, joined the lawsuit against Slater and others. Among other incidents, O'Reilly allegedly refused to air a Wright-produced segment, "Beyond the Dream," because O'Reilly claimed it was "too positive" toward black communities. O'Reilly also subjected Wright to other demeaning comments. For example, O'Reilly told Wright that he should "offer to sing the National Anthem at the Fox News Town Halls," viewing him as an entertainer rather than as a serious journalist, despite the fact that Wright has received two Emmy awards for his coverage. Shine also pigeonholed Wright, regularly asking him, "how do Black people react to you" and "how do you think White viewers look at you?" And, just like others' experiences, Wright's complaints to Shine, Scott, and Brandi about his discriminatory treatment were ignored.

4. Racial Discrimination Allegations Against Ailes

118. The class action complaint also revealed Ailes's racist behavior at Fox News. In late 2014, Musfiq Rahman ("Rahman"), a Bangladeshi employee, accidentally walked into Ailes's office. Ailes reacted with paranoia because he perceived Rahman to be a potential terrorist owing to Rahman's skin color. Ailes immediately ordered that a wall be constructed around his office. Furthermore, he subjected Rahman and other non-white employees to demeaning, discriminatory treatment by having their floor passes revoked, so that they were required to get other employees to chaperone them when they needed to speak to people on the second floor.

119. These recent racial discrimination allegations demonstrate the lengths Fox News would go to protect Ailes's and other Fox News executives' ability to discriminate and harass with impunity.

5. More Allegations Of Racial Discrimination By Slater In New York Federal Court

120. On May 22, 2017, three women, Vidya Mann, Kathleen Lee, and Naima Farrow, joined roughly 23 current and former employees suing Fox News, and certain of its affiliated entities and representatives, for race and gender discrimination, and retaliation, in the U.S. District Court for the S.D.N.Y. The complaint details sexual and/or racial discrimination by routine perpetrators, including Slater, and "unceasing retaliation" for reporting the misconduct.

121. As with the sexual harassment scandal at Fox News, new allegations of racial discrimination routinely come forward. These lawsuits demonstrate the systematic culture of racial discrimination and retaliation at Fox News. They have caused and continue to cause serious harm to the Company, as detailed below.

IV. THE BOARD'S ABDICATION OF OVERSIGHT ALLOWED AILES TO RUN FOX NEWS AS A FIEFDOM, FACILITATING HIS DECADES-LONG SEXUAL HARASSMENT

122. According to Gabriel Sherman, the author of *The Loudest Voice in the Room*,² “[Rupert] Murdoch knew Ailes was a risky hire when he brought him in to start Fox News in 1996. In fact, Ailes had just been forced out as president of CNBC under circumstances that would foreshadow his problems at Fox.” In this regard, after an NBC executive accused Ailes of making anti-Semitic remarks, NBC hired the law firm, Proskauer Rose, to conduct an investigation of the incident. “The Proskauer report chronicled Ailes’s ‘history of abusive, offensive, and intimidating statements/threats and personal attacks.’” But “[w]hat NBC considered fireable offenses, Murdoch saw as competitive advantages. . . . Murdoch tolerated Ailes’ abusiveness because he was pleased with the results.”

123. Sherman further noted that Ailes’s inappropriate conduct was well known throughout his five decades-long career. For example, although Ailes is

² *The Loudest Voice in the Room* is a biography of Roger Ailes. The detailed biography is based on over 600 interviews with individuals who either worked with or otherwise knew Ailes.

credited with playing a prominent role in Richard Nixon’s successful presidential campaign, “[o]ne prominent Republican [said] it was Ailes’s well-known reputation for awful behavior toward women that prevented him from being invited to work in the Nixon White House (or, later, in the administration of Bush 41).”

A. AILES’S BUDGETS AND MILLIONS IN “FRIENDS OF ROGER” PAYMENTS

124. Ignoring Ailes’s reputation, R. Murdoch brought Ailes to News Corp. in 1996 to create Fox News. From the beginning, Ailes reported directly to R. Murdoch and R. Murdoch approved Fox News’s budgets. From 2009 through June 2015, in addition to reporting to R. Murdoch, Ailes reported to Defendant Carey. Starting in July 2015, Ailes began reporting to all of the Murdochs and the Board, and the Murdochs and the Board were responsible for approving Fox News’s budgets.

125. Yet, instead of questioning Ailes’s expenses or otherwise providing any oversight over Ailes, R. Murdoch allowed Ailes to run Fox News as an independent fiefdom. The Murdochs and the Board, abdicating oversight responsibility, did nothing to check Ailes’s iron-fisted control, which allowed a hostile work environment where Ailes systematically harassed women for decades to grow and flourish.

126. Almost immediately upon joining Fox News, Ailes, without interference from senior management, put in place a culture of fear and

intimidation to ensure that no employee would question his authority or misconduct. Ailes established a ruthless chain of command based on loyalty and punishment and it was well-known within Fox News that Ailes was a tyrant who ruled with an iron fist. Ailes himself admitted, “I only understand friendship or scorched earth.” Thus, Fox News employees learned quickly that the only way to ensure their continued success at the news network was to follow orders and never question Ailes’s authority. As one of Ailes’s most well-known victims, Laurie Luhn, wrote to Brandi on April 17, 2011: “I followed orders. Implicit always in the orders at Fox News . . . was NOT TO QUESTION THE ORDERS.” (Emphasis in original).

127. A former high-ranking executive similarly confirmed Ailes’s iron-fisted control over Fox News stating, “I always found working at Fox like being in the military. . . . Everybody was a loyalist. Everybody was a lieutenant to Roger the general.” Ailes’s insistence that employees exhibit loyalty was so engrained in the business that Fox News employees referred to Ailes’s group of protected cohorts as “Friends of Roger” or “FOR.”

B. “KEY MAN” CONTRACTUAL PROVISIONS FOR TOP NEWS ANCHORS COST THE COMPANY MANY MILLIONS

128. Ailes facilitated his absolute control by inserting “key man” provisions in the employment contracts of key news anchors – including Bill O’Reilly, Greta Van Susteren, Sean Hannity, and Brent Baier – which would have

released them from their contractual obligations if Ailes was terminated or left Fox News. Ailes viewed such “key man” provisions as a sign of loyalty. With the Board failing to conduct reasonable oversight and intervene, Ailes effectively sabotaged Fox News to insulate himself from accountability for his misconduct.

129. Greta Van Susteren exercised that key man provision, costing Fox News many millions in a settlement. Thus, even with knowledge of Ailes’s unstable and inappropriate behavior, R. Murdoch and the Board abdicated their roles and permitted Ailes to entrench himself. In addition to his own lavish pay and severance package, Ailes imposed millions of dollars of further cost on the Company, as well as a threat of on-air talent, which made his ouster prohibitively expensive to the Company through massive payouts to key talent.

C. AILES’S EMAIL SURVEILLANCE AND THE “BLACK ROOM”

130. Ailes also used Fox News’s IT department to monitor employee emails. When Fox News’s director of IT, Deborah Sadusingh, was asked by reporters about email searches done at Ailes’s direction, she reportedly had run so many email searches that she could not “remember all the searches [she had] done.” Further, executives spoke of how Ailes “instructed Fox’s head of engineering, Warren Vandever, to install a CCTV system that allowed Ailes to monitor Fox offices, studios, greenrooms, the back entrance, and his homes.”

131. Similarly, Megyn Kelly has described a culture at Fox News where Ailes maintained “complete control” and “kept us all under careful watch – with security cameras and security locks requiring a Fox ID on every floor, guards patrolling the halls and a provision in our contracts agreeing that our office communications may be monitored.”

132. Thus, as numerous news outlets recently reported, Fox News employees refused to speak openly about misconduct in the workplace out of fear that their conversations were being monitored and/or recorded. This same sentiment was recognized by Paul Weiss in connection with its investigation of the Ailes sexual harassment claims that led to his involuntary resignation.

133. Ailes actually established a formal department dedicated to surveillance known as “The Black Room.” The Black Room was an operation Ailes established around 2011 to conduct public relations and surveillance campaigns against people he targeted, both inside and outside the Company. It was located on the 14th floor of the News Corp. building at 1211 Avenue of the Americas, a quiet part of the office that housed Fox News Latino and some marketing and promotions employees. Fox employees Ken LaCorte and Jim Pinkerton – veteran political operatives who have worked with Ailes since the 1980s – also worked with Bert Solivan, one of Ailes’s consultants, in the Black Room. According to two Fox executives, Pinkerton wrote an anonymous blog

called the Cable Game that attacked Ailes-selected targets. The Company produced records that show Fox News made multi-million dollars payments annually to finance the Black Room.

134. According to Ailes's 2015 employment agreement, the Board approved budgets for Fox News. While not specifically delineated, those budgets included amounts of money to fund the surveillance described above. As such, the Board either knew or should have known that Ailes sought to undermine the Company's reporting mechanisms and put in place surveillance measures designed to intimidate Fox News employees into not reporting any misconduct by Ailes or his loyalists and enablers.

135. All told, through their lack of oversight and complete deference to Ailes, the Board allowed Ailes to create a culture at Fox News that was antithetical to promoting open and honest reporting of misconduct. R. Murdoch's decision to give Ailes significant control over Fox News, and the Board's complete failure to exercise independent oversight permitted a culture of rampant and obvious sexual harassment and exploitation to continue unabated for nearly 20 years. It was only after Carlson filed her lawsuit publicly that the Company was forced to address Ailes's rampant sexual harassment.

V. DEFENDANTS' BREACHES OF DUTY RESULT IN AND EXACERBATE HARM TO THE COMPANY

136. As detailed above and summarized below, Defendants' breaches of duty have caused at least \$200 million of realized, quantifiable harm to date, with the potential for millions more.

A. THE COMPANY PAYS OVER \$75 MILLION IN SEVERANCE TO AILES AND O'REILLY INSTEAD OF TERMINATING THEM FOR CAUSE

137. The Company paid \$47 million more in severance to Ailes than he would have received if he had been terminated for cause, and \$25 million in severance to O'Reilly. As described above, Ailes and O'Reilly should have both been terminated for cause.

B. THE COMPANY PAYS OVER \$55 MILLION IN SEXUAL HARASSMENT SETTLEMENTS

138. Fox News has paid *over \$55 million* to settle sexual harassment and discrimination complaints to date. As detailed above, there is the potential for millions more in additional settlements as lawsuits, including the racial discrimination class action, are pending.

C. THE THREAT TO THE COMPANY'S \$14 BILLION BID FOR SKY

139. In addition, the continuing scandal could potentially derail the Company's second attempt to acquire British Sky Broadcasting Group PLC ("Sky"). On December 9, 2016, the Company announced that it had reached an agreement with Sky to acquire all of the outstanding shares in Sky not currently

owned by the Company (61% of the outstanding shares) for £10.75/share, or an aggregate \$14.3 billion. This strategically important and material transaction to the Company has been put at risk due to the Board's failure to act in the face of the systematic sexual harassment, discrimination, and retaliation culture at Fox News.

140. Notably, the Company's first attempt to cement its control over Sky failed, when another scandal involving allegations of illegal activities of phone hacking at the Company's subsidiaries erupted during the acquisition process. Specifically, on June 10, 2010, the Company (then known as News Corp.) offered to purchase the 61% of Sky that it did not already own. News Corp. considered the transaction a boon because it would allow for a broad array of cross-marketing possibilities.

141. By July 11, 2011, however, U.K. Deputy Prime Minister Nick Clegg asked R. Murdoch to "reconsider" the Sky offer in the midst of allegations that executive management of the Company's British newspapers were violating privacy and other laws in order to turn a profit, with R. Murdoch's and J. Murdoch's approval. Two days later, the Company issued a press release stating that it no longer intended to make the offer for Sky. The Company acknowledged that the hacking scandal derailed what was widely accepted as an excellent strategic play by News Corp. At the time, Defendant Carey commented: "We believed that the proposed acquisition of [Sky] by News Corporation would benefit

both companies but it has become clear that it is too difficult to progress in this climate.”

142. Wendy Walsh, one of the women who accused O’Reilly of sexual harassment, raised the pressure on the Company’s bid for Sky, by arguing that the Murdochs cannot fulfill the “fit and proper” test due to the current scandal at Fox News. Specifically, Walsh’s attorney, Lisa Bloom, wrote to Ofcom, linking the scandal at Twenty-First Century Fox and the bid to take over the 61% of Sky that the Company does not already own. Bloom accused Fox News of having an “utter disregard for the rights of women” and creating a “toxic culture.” She further wrote: “Fox’s failure to intervene to protect the rights of its female journalists, its secret payouts, and use of intimidation tactics are reminiscent of R. Murdoch’s tabloid phone-hacking scandal in 2011, when it emerged that News of the World reporters had hacked the voicemail of murdered schoolgirl Milly Dowler.” “The similarities between the current harassment scandal and the phone-hacking scandal reveal the company’s approach to business and management – a lack of oversight, intervention and decency.” Walsh and Bloom then met with Ofcom on May 8, 2017.

143. Douglas Wigdor, counsel for the class of race discrimination victims, also met with Ofcom on May 11, 2017 to discuss similar concerns.

144. In a June 29, 2017 report, Ofcom condemned the “extremely serious and disturbing” allegations of sexual harassment, which it stated reflected “corporate failings at Fox News.” Although Ofcom ultimately concluded that Fox News could still meet the fit and proper standard, several Members of Parliament questioned Ofcom’s decision and argued that Ofcom did not give these allegations enough weight.

145. Critically, a company would not fail the “fit and proper” test due to the actions of an isolated rogue employee. The ability to pass the “fit and proper” test is called into serious question when a company’s culture is unethical and not to be trusted. The debate about whether Twenty-First Century Fox can meet the “fit and proper” test here reflects a cultural pattern.

146. In August 2017, this debate was brought to the forefront again when Douglas Wigdor, the attorney who is representing Fox News employees in discrimination and sexual harassment lawsuits, wrote to Ofcom to highlight how a 2006 sexual harassment-related consent decree Fox had entered indicated that Fox executives on the Board likely either knew about the sexual harassment allegations over the last decade or recklessly disregarded them.

147. Due to the continued pressure over the sexual harassment allegations, the U.K. Government asked Ofcom to re-assess the merger and “provide further

clarification” on its findings and conclusions by August 25, 2017. Those conclusions will be made public within the next month.

148. Accordingly, the Company’s bid to acquire Sky may end in failure – *for the second time* – due to another scandal that the Murdochs and other senior management facilitated while the Board did nothing.

D. THE BOARD’S FAILURE TO RECOGNIZE THE COMPANY’S BROADER CULTURE PROBLEMS NOTWITHSTANDING THE HACKING SCANDAL

149. The Board’s response to the hacking scandal demonstrates that the Board and senior management know when a broad response is appropriate. After extensive negotiations with the same lead counsel prosecuting this case, senior management implemented significant governance reforms at the Company. However, senior management waited to implement those reforms until there were numerous red flags and the hacking was completely out of control.

150. The hacking scandal did not involve human resources issues, however, the Board learned from that experience that a comprehensive approach is necessary to achieve meaningful reform. Here, the Board was put on notice of the hostile work environment at Fox News and nonetheless, the Board did not act in response to numerous red flags.

E. ADVERTISERS PULL OUT AND RATINGS DROP IN THE WAKE OF THE SCANDAL

151. *At least 60 advertisers* pulled out in the wake of the O'Reilly scandal.

To date, the Company has lost \$3 million in advertising from BMW and Bank of America with the potential for additional losses.

152. Thus, by failing to recognize and address the culture of sexual harassment at Fox News, the Board and senior management caused direct harm to the Company and its stockholders. As a spokeswoman for Mercedes-Benz stated, "The [O'Reilly] allegations are disturbing and, given the importance of women in every aspect of our business, we don't feel this is a good environment in which to advertise our products right now[.]"

153. Moreover, Fox News's long history of sexual harassment and racial discrimination, along with the terminations of high-profile employees and the myriad settlements of victimized employees, is starting to have a negative impact on its viewership. For example, during the week of May 14-20, 2017, *for the first time in 17 years*, Fox News came in third behind MSNBC and CNN in the critical 25-54 group that is most important to advertisers.

F. THE COMPANY INCURS ADDITIONAL LITIGATION COSTS FROM PENDING HARASSMENT AND DISCRIMINATION LAWSUITS

154. As described above, multiple lawsuits for sexual and racial harassment, and sexual and racial discrimination are currently pending against the

Company. To date, the Company has incurred an estimated \$20 million in litigation costs in connection with these lawsuits.

G. “FRIENDS OF ROGER” PAYMENTS

155. Moreover, as detailed above, the Company has paid out \$6.3 million in “Friends of Roger” costs during 2011 through 2016.

H. GRETA VAN SUSTEREN EXERCISES HER “KEY MAN” CLAUSE FOR MANY MILLIONS

156. Greta Van Susteren’s exercise of her “key man” clause for many millions has caused additional harm to the Company. Moreover, the “key man” clauses in the contracts of multiple other Fox News employees, discussed above, have no expiration date and the Company will incur additional harm if other employees choose to exercise their clauses in the future.

I. LOSS OF TALENT

157. The loss of high profile talent, including Megyn Kelly, Greta Van Susteren, Gretchen Carlson, and Andrea Tantaros in the wake of the sexual harassment scandal has further exacerbated the harm to the Company.

J. THE HOSTILE WORK ENVIRONMENT AT FOX NEWS

158. In addition, regulations of the EEOC make clear that a company is vicariously liable for acts of sexual harassment by its employees when it knows, or should have known, about the misconduct, unless the company shows that it took immediate and appropriate corrective action. Associated enforcement guidance

and judicial rulings confirm that companies must undertake thorough investigations and impose appropriate remedial measures when they learn of sexual harassment allegations. Otherwise, they are liable for failing to remedy known hostile or offensive work environments.

K. FOX IS NOW AT THE CENTER OF A CRIMINAL INVESTIGATION

159. The misconduct described above is so egregious that Fox News and Twenty-First Century Fox are now at the center of a criminal investigation by the U.S. Attorney's Office for the Southern District of New York. Publicly available information regarding the criminal investigation is limited. The Company, however, has confirmed this criminal investigation.

160. The U.S. Attorney's Office has now proceeded to a grand jury. While still in the early stages, the government subpoenaed Mark Kranz, the former finance officer at Fox News who oversaw the network's finances when it paid millions of dollars in settlements. Kranz was terminated in August 2016, one month after Ailes had left the Company.

161. The investigation focuses on the failure to disclose the sexual harassment and the settlements of those claims in the Company's public filings, which violates federal securities laws. The investigation has included immunity for Fox News's former CFO, as well as subpoenas to the Company's auditors.

DERIVATIVE ALLEGATIONS

162. Plaintiff brings this action derivatively in the right and for the benefit of Twenty-First Century Fox to redress the breaches of fiduciary duty and other violations of law by Defendants as alleged herein. Plaintiff is a current stockholder of the Company and was a stockholder during misconduct alleged herein, holding Twenty-First Century Fox, Inc. continuously. Plaintiff will continue to hold Twenty-First Century Fox, Inc. stock through the resolution of this action.

163. Plaintiff will adequately and fairly represent the interests of Twenty-First Century Fox and its stockholders in enforcing and prosecuting the Company's rights, and Plaintiff has retained counsel experienced in prosecuting this type of derivative action.

DEMAND FUTILITY ALLEGATIONS³

164. Plaintiff has not made any demand on the Board to institute this action against the Individual Defendants. Such demand would be futile because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

³ On March 30, 2017, the parties stipulated that for purposes of evaluating pre-suit demand futility under Delaware Chancery Rule 23.1, the Board of Directors shall be deemed to consist of the members of the Board as it existed on March 21, 2017.

A. PRESUIT DEMAND IS EXCUSED BECAUSE DEFENDANT R. MURDOCH DOMINATES AND CONTROLS THE BOARD

165. R. Murdoch exercises absolute control over Twenty-First Century Fox. Not only is Murdoch the controlling shareholder of the Company, but he appointed his two sons, James and Lachlan, as Chief Executive Officer and Co-Executive Chairman. As Rodney Tiffen, corporate governance expert, described it in a January 2017 *Sydney Morning Herald* article: “There has never been any major company decision that [Rupert] Murdoch did not want to happen.”

166. As controlling stockholder, CEO, and Executive Chairman, R. Murdoch has closely overseen the business operations of Fox News since its launch, and R. Murdoch has unfettered control over the day-to-day business operations of Twenty-First Century Fox. R. Murdoch formed Twenty-First Century Fox in June 2013 by spinning out entertainment and media properties from R. Murdoch’s News Corp. As of September 23, 2016, R. Murdoch controlled approximately 38.9% of Twenty-First Century Fox voting B stock.

167. Additionally, R. Murdoch has repeatedly caused the Board to protect his control over Twenty-First Century Fox (previously News Corp). In 2004, John Malone amassed a 16.3% voting stake in the Company’s stock, when the Company relocated its headquarters from Australia to the United States. Perceiving Malone’s position as a threat to his control, on December 22, 2006, R. Murdoch agreed to swap News Corp.’s 38.4 percent stake in DIRECTV with Liberty Media

Corp. in exchange for Liberty's 16 percent stake in News Corp. As the *Washington Post* reported, "the deal with Liberty removes a potential threat to the Murdoch family's control of the company[.]"

168. In 2013, R. Murdoch had similar concerns about threats to his control, when News Corp. announced that it would spin off Twenty-First Century Fox. In advance of the separation, the Board adopted a poison pill to prevent challenges to R. Murdoch's control of his family media empire. The stockholder rights plan, effective for a year, allowed the Murdochs to dilute any stockholder attempting to take control of Twenty-First Century Fox in a period when there may be heavy trading in the stock. As the *Financial Times* reported on May 24, 2013, "That should reduce the risk of challenges [to R. Murdoch's control] such as that mounted by John Malone in 2004[.]" The Company's press release made clear that the stockholder rights agreement sought to protect R. Murdoch's control: "The Company has considered that there may be significant volume of trading in shares of 21st Century Fox . . . around the time of the separation, and for a period thereafter. The rights agreement[] [is] intended to protect the stockholders of the Company . . . from efforts to obtain control of such companies [.]"

169. Recently, in September 2015, R. Murdoch once again took steps to limit threats to his control. Following ValueAct's accumulation of 7 percent of Twenty-First Century Fox, R. Murdoch took steps to limit the firm's influence. R.

Murdoch caused the Company to negotiate a pact with ValueAct that provided Jeffrey Ubben a seat on the Company's board. In return, ValueAct was forbidden for a period of time from waging proxy battles, blocking any large transactions the Company was pursuing, or even speaking out against such deals. Importantly, the agreement prohibited ValueAct from owning more than 7 percent of Twenty-First Century Fox's voting shares.

170. Given R. Murdoch's repeated attempts to thwart outside investors from owning a substantial stake in Twenty-First Century Fox, and the fact that no stockholder (besides R. Murdoch) owns greater than 6.3 percent of the Company's stock, R. Murdoch has shown that he has control over the Company and its Board.

171. Beyond his voting control, however, the Board has ceded unfettered control over the business operations of Twenty-First Century Fox to R. Murdoch. Throughout the Company's history, R. Murdoch has used his position as founder and significant stockholder to assert actual control and domination over the day-to-day business of Twenty-First Century Fox. From 1979 until July 2015, R. Murdoch directed the Company's business operations as Chief Executive Officer. During that time, R. Murdoch controlled every aspect of the Company, including having Ailes directly report to him. Even when R. Murdoch stepped down as Chief Executive Officer of Twenty-First Century Fox in July 2015, he continued to wield absolute control by appointing his children, James and Lachlan Murdoch, to

lead the Company: J. Murdoch took R. Murdoch's place as Chief Executive Officer, and L. Murdoch was made Co-Executive Chairman. R. Murdoch remains the Co-Executive Chairman of Twenty-First Century Fox and the Executive Chairman of Fox News.

172. In addition to his long-standing role as an executive, the Board has also continuously and unwaveringly submitted to the wishes of R. Murdoch, and extended him and his family members every privilege at the expense of the Company. Even after appointing his sons to run the Company, CNBC reported on July 15, 2016, "No one doubts the elder Murdoch will still have the final say on whatever goes on at [Twenty-First Century Fox]"

173. As alleged herein, R. Murdoch recently confirmed his ability to control the Board when he appointed himself interim Executive Chairman and CEO of Fox News.

174. Unsurprisingly, the Board has pledged unwavering support for R. Murdoch and senior management as fresh details of the sexual harassment scandal are released almost daily. As such, the Board has proven it is incapable of rendering independent judgment and will not act independently because it is dominated by R. Murdoch.

B. PRESUIT DEMAND IS EXCUSED BECAUSE A MAJORITY OF THE BOARD LACKS INDEPENDENCE

175. An examination of who makes up the Board at Twenty-First Century Fox explains why the Board took no action in the face of this crisis. A majority of the Board members are beholden to R. Murdoch, invest with R. Murdoch, or otherwise have a close personal relationship with R. Murdoch.

176. As the Company's proxy statement, filed November 10, 2016, candidly admits, five of the thirteen Board members, namely Defendants R. Murdoch, J. Murdoch, L. Murdoch, Chase Carey, and David DeVoe are not independent directors.

177. Lachlan Murdoch is the son of R. Murdoch and the brother of J. Murdoch. L. Murdoch has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 1996 and as Executive Chairman since July 2015. The Company admits that Lachlan Murdoch is not independent.

178. James Murdoch is the son of R. Murdoch and the brother of L. Murdoch. J. Murdoch has been a director of the Company since 2007 and its CEO since 2014. J. Murdoch has held a variety of leadership roles over nearly 20 years at Twenty-First Century Fox, which include serving as Co-Chief Operating Officer ("COO") from 2014 to 2015. The Company admits that J. Murdoch is not independent.

179. Charles G. (“Chase”) Carey, Vice Chairman, has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 2009. Carey has been the Vice Chairman of the Board and a consultant to the Company since July 2016. Carey previously served as Executive Vice Chairman of the Company from July 2015 through June 2016 and as President and Chief Operating Officer (“COO”) of the Company and Deputy Chairman of the Board from 2009 through June 2015. Carey served the Company in numerous roles beginning in 1988, including as Co-COO from 1996 to 2002, as a consultant from 2002 to 2003 and as a director from 1996 to 2007, and as Deputy Chairman of the Board from 2009 through June 2015. As provided in Ailes’s 2012 employment contract, R. Murdoch, along with Carey, were Ailes’s direct supervisors.

180. Carey has also served on the Supervisory Board of Sky Deutschland, a company in which R. Murdoch is the largest stockholder, from 2010 to 2014 and as its Chairman from 2010 to 2013. Since 2013, Carey has served as a director of Sky plc, where he was a director from 2003 to 2008. R. Murdoch holds a significant interest in Sky plc. The Company admits that Carey is not independent.

181. David Francis DeVoe has served as a member of the Board of Twenty-First Century Fox (and its predecessor company, News Corp.) since 1990. DeVoe currently serves as a Senior Advisor of the Company. He served as CFO of

the Company from 1990 to 2013. During his time at Twenty-First Century Fox, DeVoe has received tens of millions of dollars in compensation, and continues to receive millions in compensation annually as Senior Advisor. DeVoe also served as a director of Sky plc from 1994 to November 2015. The Company admits that DeVoe is not independent.

182. At least three out of the eight remaining directors are not disinterested or independent due to specific personal and professional conflicts of interest that render them beholden to R. Murdoch. Plaintiffs' Counsel conducted interviews and depositions that revealed further information relating to the lack of independence of the directors.

183. Viet Dinh also shares a close and personal relationship with the Murdoch family that extends beyond Dinh's service on the Twenty-First Century Fox Board. Dinh and L. Murdoch have forged a tight-knit friendship since they met in June 2003 at the Aspen Institute conference on journalism and homeland security.

184. However, Dinh's ties to the Murdoch family extend almost two decades to 1992.

185. Moreover, Dinh and L. Murdoch are so close that they are godfathers of each other's children. Dinh is the godfather of L. Murdoch's child and R. Murdoch's grandchild and L. Murdoch is the godfather of Dinh's son. There are

few decisions more personal than making someone the godfather of your child. A godfather is the person who will traditionally care for your child in the event of your death. This voluntary choice is the ultimate showing of mutual affection, respect, love, and trust.

186. As a Board member since 2004, Dinh has received over three million dollars in compensation. Because of Dinh's close personal relationship with the Murdoch family, and the material compensation he receives as a Company director, he cannot evaluate any demand to bring litigation against R. Murdoch or any of his sons in an independent and disinterested manner. Demand is futile as to Dinh.

187. Roderick I. Eddington is not independent or disinterested. Eddington was appointed to the Board by R. Murdoch in 1999. Previously, Eddington served as a director of News Limited, the Company's predecessor's principal subsidiary in Australia. Eddington has had longstanding and significant business ties to Twenty-First Century Fox and the Murdochs.

188. Eddington to this day has significant financial ties to the Murdochs and the Company. Eddington currently serves as Non-Executive Chairman of JPMorgan Chase & Co. ("J.P. Morgan") in Australia and New Zealand, and possesses conflicts that arise from J.P. Morgan's significant business dealings with R. Murdoch's companies. J.P. Morgan advised News Corp. in major transactions,

such as the sale of its stake in Direct TV in 2006 and its purchase of the Dow Jones Company. In one of few major transactions where J.P. Morgan did not advise News Corp., it instead advised the counterpart, Shine Group, which was controlled by Elisabeth Murdoch, R. Murdoch's daughter. J.P. Morgan also was part of a consortium that provided the Company a \$2.25 billion unsecured revolving credit facility in 2007. In May 2015, Twenty-First Century Fox entered into a credit agreement that provides a \$1.4 billion unsecured revolving credit facility to the Company.

189. Moreover, Eddington became the deputy chair of News Limited in 1997, a year after he was chosen to run Ansett Australia, the airline in which News Corp. owned a 50% stake. Owing to Eddington's long-standing business relationships and reliance on the Company and the Murdochs' largesse, he cannot be independent and disinterested.

190. James W. Breyer is formerly a partner at Accel Management, Inc., which has had and will continue to have close business relations with Twenty-First Century Fox. Either Breyer or Accel invested in numerous ventures in which News Corp. also invested, including BizTravel.com and Omneon. Accel also invested in OpenX Technologies, whose Chairman Jonathan Miller was News Corp.'s Chief Digital Officer. In 2011, when Breyer was nominated to the Company Board, Accel invested in Myspace China, a subsidiary of News Corp.'s

Myspace, which employed R. Murdoch's then wife, Wendi Murdoch. In addition, both Breyer and Ms. Murdoch co-invested in Art.sy, an art discovery and shopping site. Breyer also had a major investment in Brightcove, which in 2007 signed a deal with Fox Entertainment to provide it with online digital services. Owing to his longstanding business and personal relations with the Company, its predecessor, and the Murdochs, Breyer cannot be disinterested or independent.

191. As a result of familial or longstanding business or personal ties, at least eight of thirteen Directors of the Board, constituting a super-majority, are thus conflicted, and cannot be expected to act in a disinterested or independent manner.

192. Presuit demand is excused because a majority of the Board faces a substantial likelihood of liability for abdicating their responsibility to exercise oversight of Fox News, the investigation and termination of Ailes, the settlement of claims of sexual misconduct relating to conduct of Ailes, and the continuing misconduct.

193. Presuit demand is also excused because the Board faces a significant likelihood of liability for abdicating their oversight responsibilities with respect to Fox News.

194. For years, R. Murdoch had knowledge that Ailes presented a serious risk to Twenty-First Century Fox employees. R. Murdoch "routinely" called Ailes "cuckoo," "bonkers," "nuts," and "crazy." Moreover, R. Murdoch knew or was

reckless in not knowing about the culture of sexual harassment given Ailes's crude and lewd behavior, Fox News's hypersexualized environment, and the business unit's obvious and long-standing history of sexual harassment. R. Murdoch, therefore, either knew about Ailes's abuse and failed to report it to the Board, or knowing of Ailes's abusive personality and management style, deliberately turned a blind eye to extensive misconduct. For these reasons, R. Murdoch faces a substantial likelihood of liability for breaching his duties of due care and loyalty.

195. R. Murdoch, L. Murdoch, and J. Murdoch also face a substantial likelihood of liability for recklessly failing to inform themselves of all material information reasonably available to them prior to allowing Ailes to resign with severance and promoting Shine as Co-President.

196. Demand is also futile because the Board cannot act in a disinterested or independent manner because it faces a substantial likelihood of liability and has repeatedly exhibited an inability to otherwise validly exercise its business judgment.

197. As alleged herein, the Board abdicated its responsibility to exercise oversight at Fox News. As demonstrated above, Fox News has a sustained and systematic history of sexual harassment by its executives and talent. Had the Board exercised even minimal oversight, they would have been aware of this history, given the negative publicity around many of these lawsuits, and given the

sheer number and in some cases substantial sizes of the settlements relative to the salaries of the plaintiffs. The Board ignored the following “red flags” that should have alerted them to significant wrongdoing by senior management and talent at Fox News, including but not limited to:

- (a) The 2004 sexual harassment lawsuit by Andrea Mackris against Bill O’Reilly, which was reportedly settled for \$10 million;
- (b) The 2006 settlement of an EEOC lawsuit filed on behalf of Kim Weiler and her colleagues against Fox News Vice President Joe Chillemi;
- (c) The 2011 settlement of Laurie Luhn’s sexual harassment lawsuit; and
- (d) The 2014 publication of and publicity (including a Fox News press release) surrounding *The Loudest Voice in the Room*, by *New York Magazine* reporter Gabriel Sherman, alleging a decades-long history of sexual harassment by Roger Ailes.

198. Moreover, after the widespread publicity of the culture at Fox News, as set forth above, the Board did not act promptly and effectively in response, thus breaching its duty of oversight and allowing the culture of sexual harassment at Fox News to continue longer than it would have had the Board acted more quickly.

199. Finally, the recent revelations of longstanding problems, such as over a decade's worth of sexual harassment settlements involving Bill O'Reilly, and the continuing sexual harassment and racial discrimination lawsuits, are evidence that the Board had not responded sufficiently to longstanding problems at Fox News, and failed to conduct an expansive investigation at the time the Ailes scandal came to light.

200. For all the above reasons, demand upon the Board would be futile and is therefore excused.

CLAIMS FOR RELIEF

COUNT I

BREACH OF FIDUCIARY DUTY

(AGAINST RUPERT MURDOCH IN HIS CAPACITY AS CONTROLLING STOCKHOLDER)

201. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

202. Rupert Murdoch is the controlling stockholder of Twenty-First Century Fox and, as such, owed and continues to owe Plaintiff and Twenty-First Century Fox the highest obligation of due care, loyalty, and good faith.

203. By reason of the foregoing, Rupert Murdoch breached his fiduciary duties – in particular, by abusing his control of the Company to: (i) allow a hostile work environment, which included rampant sexual harassment and exploitation,

racial discrimination, and retaliation, to go unchecked for at least a decade; (ii) allow a generous severance package for Ailes despite the untold damage he has done to the Company brand; and (iii) allow a generous severance package for O'Reilly despite the untold damage he has done to the Company brand.

204. As a result of the misconduct alleged herein, Rupert Murdoch is liable to the Company for the damages resulting directly and proximately from his breaches of fiduciary duty.

COUNT II
BREACH OF FIDUCIARY DUTY

**(AGAINST THE DIRECTOR DEFENDANTS OTHER THAN RUPERT
MURDOCH, LACHLAN MURDOCH AND JAMES MURDOCH)**

205. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

206. The Director Defendants owed and owe fiduciary duties to Twenty-First Century Fox and its stockholders. By reason of their fiduciary relationships, the Director Defendants specifically owed and owe Plaintiff and Twenty-First Century Fox the highest obligation of good faith and loyalty in the administration of the affairs of the Company, including, without limitation, the oversight of Twenty-First Century Fox's compliance with and the duty to conduct a good faith investigation into known violations of laws, regulations, and internal policies concerning sexual harassment and discrimination.

207. The Director Defendants consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways: (i) willfully abdicating their roles as fiduciaries by permitting a hostile work environment, which included rampant sexual harassment and exploitation, racial discrimination, and retaliation to continue unabated for more than a decade; and (ii) allowing senior management to control the flow of information relating to the investigation into sexual harassment at Fox News and the negotiation of Ailes's separation agreement.

208. As a direct and proximate result of the Director Defendants' conscious failure to perform their fiduciary duties, Twenty-First Century Fox has sustained, and will continue to sustain, significant damages – both financially and to its corporate image and goodwill. Such damages to Twenty-First Century Fox caused by the Director Defendants include, and will include, the substantial penalties, fines, damages awards, settlements, expenses, increased regulatory scrutiny, and other liabilities described herein. Moreover, Twenty-First Century Fox is now the subject of investigation by several federal agencies, is subject to increased prosecutorial and regulatory scrutiny, and is currently facing a grand jury indictment for the misconduct alleged herein.

209. As a result of the misconduct alleged herein, the Director Defendants are liable to the Company for the damages resulting directly and proximately from these breaches of fiduciary duty.

COUNT III
BREACH OF FIDUCIARY DUTY

**(AGAINST DEFENDANTS RUPERT MURDOCH, LACHLAN MURDOCH,
AND JAMES MURDOCH IN THEIR CAPACITY AS DIRECTORS)**

210. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

211. Rupert Murdoch, Lachlan Murdoch, and James Murdoch owed and owe fiduciary duties to Twenty-First Century Fox and its stockholders. By reason of their fiduciary relationships, Rupert Murdoch, Lachlan Murdoch, and James Murdoch specifically owed and continue to owe Plaintiff and Twenty-First Century Fox the highest obligation of due care, loyalty, and good faith in the administration of the affairs of the Company, including, without limitation, the oversight of Twenty-First Century Fox's compliance with and the duty to conduct a good faith investigation into known violations of laws, regulations, and internal policies concerning sexual harassment and racial discrimination.

212. Rupert Murdoch, Lachlan Murdoch, and James Murdoch consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways: (i) failing to actively oversee Fox News's workplace

thereby permitting a hostile work environment, which included rampant sexual harassment and exploitation, racial discrimination, and retaliation to continue unabated for more than a decade; (ii) approving a generous no-fault settlement with Ailes despite knowing the extent of his sexual misconduct and his continued attempts to undermine the Company's investigation through threats to and bribery of employees in the hope of influencing them to remain silent; (iii) renegotiating a contract containing a lucrative severance provision with O'Reilly; and (iv) then approving a lucrative payout for O'Reilly after knowledge of his misdeeds became public and a public revolt waged against O'Reilly.

213. As a result of Rupert Murdoch's, Lachlan Murdoch's and James Murdoch's breaches of fiduciary duties, the Company has suffered and will continue to suffer harm, as alleged herein.

COUNT IV
BREACH OF FIDUCIARY DUTY

**(AGAINST DEFENDANTS RUPERT MURDOCH, LACHLAN MURDOCH,
JAMES MURDOCH, AND CHARLES G. CAREY
IN THEIR CAPACITY AS OFFICERS)**

214. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

215. Rupert Murdoch, Lachlan Murdoch, James Murdoch, and Chase Carey owed and owe fiduciary duties to Twenty-First Century Fox and its stockholders. By reason of their fiduciary relationships, Rupert Murdoch, Lachlan

Murdoch, James Murdoch, and Chase Carey specifically owed and continue to owe Plaintiff and Twenty-First Century Fox the highest obligation of due care, loyalty, and good faith in the administration of the affairs of the Company, including, without limitation, the oversight of Twenty-First Century Fox's compliance with and the duty to conduct a good faith investigation into known violations of laws, regulations, and internal policies concerning sexual harassment and racial discrimination.

216. Rupert Murdoch, Lachlan Murdoch, James Murdoch, and Chase Carey consciously breached their fiduciary duties and violated their corporate responsibilities in at least the following ways: (i) failing to properly exercise their oversight responsibilities resulting in a hostile work environment, which included rampant sexual harassment and exploitation, racial discrimination, and retaliation to continue unabated for more than a decade; (ii) approving a generous no-fault settlement with Ailes despite knowing the extent of his sexual misconduct and his continued attempts to undermine the Company's investigation through threats to and bribery of employees in the hope of influencing them to remain silent; (iii) renegotiating a contract containing a lucrative severance provision with O'Reilly while knowing that O'Reilly had been accused of sexual harassment; and (iv) approving a lucrative payout for O'Reilly after knowledge of O'Reilly's conduct became public and a public revolt waged against O'Reilly.

217. As a result of Rupert Murdoch's, Lachlan Murdoch's, James Murdoch's, and Chase Carey's breaches of fiduciary duties, the Company has suffered and will continue to suffer harm, as alleged herein.

COUNT V
BREACH OF FIDUCIARY DUTY

**(AGAINST DEFENDANT THE ESTATE OF ROGER AILES IN HIS
CAPACITY AS OFFICER)**

218. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

219. As alleged in detail herein, as the Chief Executive Officer of Fox News, Roger Ailes owed the highest obligation of due care, loyalty, and good faith in the administration of the affairs of the Company. In breach of those duties, he engaged in widespread misconduct, engaged in acts of intimidation, concealed his misconduct, and misappropriated corporate resources for his own benefit by, among other things, funding black operations against his personal opponents.

220. As a result of Ailes's breaches of fiduciary duties, the Company has suffered and will continue to suffer harm, as alleged herein.

COUNT VI
UNJUST ENRICHMENT

(AGAINST DEFENDANT THE ESTATE OF ROGER AILES)

221. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

222. As alleged in detail herein, as the Chief Executive Officer of Fox News, Ailes engaged in widespread misconduct, and yet he has received \$70 million in a no-fault separation, generous benefits, indemnification against lawsuits, and the opportunity to earn further compensation from the Company as a consultant.

223. Accordingly, Roger Ailes and his Estate have received and will receive improper remuneration despite his widespread misconduct leading to his separation.

224. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for Ailes and his Estate to retain the improper benefits he and his Estate have received and will receive under his separation agreement as a result of his misconduct.

225. To remedy the unjust enrichment of Ailes and his Estate, the Court should order his Estate to disgorge to the Company the amounts paid to him and his Estate under the terms of his separation agreement, and compensate the Company for settling sexual harassment lawsuits on his behalf.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

a. Determining that this action is a proper derivative action maintainable under the law and demand was excused;

- b. Finding that the members of the Board breached their fiduciary duties;
- c. Finding that Rupert Murdoch breached his fiduciary duties as controlling stockholder;
- d. Finding that the Murdochs, Chase Carey, and Roger Ailes breached their fiduciary duties of due care and loyalty as officers;
- f. Finding that Roger Ailes and his Estate were unjustly enriched;
- g. Against all Defendants and in favor of the Company for the amount of any and all damages sustained by the Company as a result of the Defendants' breaches of fiduciary duty;
- h. Against all Defendants and in favor of the Company for extraordinary equitable and injunctive relief as permitted by law and/or equity;
- i. Directing the Company to take all necessary actions to reform and improve its internal controls and Board oversight concerning sexual and racial harassment, and sexual and racial discrimination;
- j. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and
- k. Granting such other and further relief as the Court deems just and proper.

Dated: November 20, 2017

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