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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 SALEM MEDIA GROUP, INC.,
12 Plaintiff,
13 v.
14 ATLANTIC SPECIALTY INSURANCE
15 COMPANY,
16 Defendant.

Case No.
COMPLAINT FOR:
1) DECLARATORY JUDGMENT;
2) BREACH OF CONTRACT;
3) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING
DEMAND FOR JURY TRIAL

17 **GENERAL ALLEGATIONS**

18 **Jurisdiction and Parties**

19 1. Pursuant to Local Rule 8-1, requiring that the first paragraph set forth
20 the basis for jurisdiction, this Court has subject matter jurisdiction over this case as
21 a matter of diversity jurisdiction pursuant to 28 U.S.C. § 1332 in that it is between
22 citizens of different states and the amount in controversy exceeds \$75,000, as more
23 fully alleged herein.

24 2. Plaintiff Salem Media Group, Inc. (“Salem Media”) is a corporation,
25 organized and existing under the laws of the State of Delaware, with a principal
26 place of business in the County of Ventura, State of California, which is within the
27 Central District of California.
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1 3. Salem Media is informed and believes, and therefore alleges, that
2 Defendant Atlantic Specialty Insurance Company (“Atlantic Insurance”), is a
3 corporation, organized and existing under the laws of the State of New York with
4 a principal place of business in the State of Minnesota. Atlantic Insurance has
5 elected to qualify to do business within the State of California since at least 2000,
6 and Plaintiff is informed and believes that Atlantic Insurance has done business
7 within the State of California continuously since that time. Atlantic Insurance is,
8 for the purposes of this Complaint, an insurance company.

9 4. Venue is proper before this Court in that Atlantic Insurance sold and
10 delivered the relevant policy of insurance to Salem Media in the County of Ventura,
11 which is therefore the place of the contract, and Atlantic Insurance also breached
12 the obligations thereunder within the County of Ventura, the place in which
13 performance by payment of policy benefits was due, all as more fully set forth
14 below.

15 **The Film 2000 Mules**

16 5. Salem Media is a multi-media company, the business of which
17 includes, but it not limited to, radio broadcaster, Internet content provider,
18 magazine publisher, book publisher and video/movie distributor.

19 6. Salem Media was and is the distributor for a film known as “2000
20 Mules” which was first released on or about May 20, 2022.

21 **Insurance Policy**

22 7. For many years prior to obtaining any policy of insurance from
23 Atlantic Insurance, Salem Media, as a multi-media company, obtained many types
24 of insurance coverage including, but not limited to, a “Mediaguard” policy from
25 Federal Insurance Company, for the policy period March 1, 2022 to March 1, 2023,
26 with a retention of \$500,000 per claim and policy limits of \$3 million per claim
27 (“Chubb Policy”). That policy was intended to cover all of the media activities of
28

1 Salem Media including, but not limited to, the distribution of video content. Salem
2 Media was specifically covered for “Media Activities” which includes:

3 (A) any actual or alleged act, error or omission arising directly out of
4 the gathering, recording, collection, writing, editing, publication,
5 dissemination, exhibition, broadcast or release of Matter in connection
6 with the Covered Media, including but not limited to any actual or
7 alleged:

8 (1) invasion or infringement of the right of privacy or publicity,
9 including the torts of intrusion upon seclusion, publication of private
10 facts, false light, or misappropriation of name or likeness;

11 (2) libel, slander, or any other form of defamation or harm to the
12 character or reputation of any person or entity, including product
13 disparagement or trade libel;

14 (3) outrage, infliction of emotional distress or prima facie tort;

15 (4) false arrest, detention or imprisonment, harassment, trespass,
16 wrongful entry or eviction, eavesdropping, or other invasion of the right
17 of private occupancy;

18 (5) copyright infringement or misappropriation of property
19 rights, information or ideas or dilution or infringement of title, slogan,
20 trademark, trade name, service mark, or service name;

21 (6) negligence in connection with the content of Matter,
22 including but not limited to any Claim alleging harm to a person or
23 entity who acted or failed to act in reliance upon such Matter; or

24 (B) any actual or alleged act, error or omission arising directly out of
25 the development, creation, production, placement or dissemination of
26 Matter consisting of or relating to advertising, publicizing, promotion
27 or sale of the goods or services of the Insured or others where such
28 Matter is in, or directly relating to, the Covered Media.

1 Covered Media, in turn, was defined as “All programming and publications
2 produced or disseminated by the Insured and all radio stations owned and operated
3 by the Insured; all advertising materials produced or disseminated by the Insured.”
4 And Matter was defined as “the content of any communication of any kind
5 whatsoever, regardless of the nature or form of such Matter or the medium by which
6 such Matter is communicated, including but not limited to language, data, facts,
7 fiction, music, photographs, images, advertisements, artistic expression, or visual or
8 graphical materials.”

9 8. Subsequent to the issuance of the Chubb Policy, Atlantic Insurance
10 issued a contract of insurance entitled “Producer and Entertainment Advantage
11 Policy,” for the policy period of April 29, 2022 through April 29, 2023, with policy
12 number MEP-27954-22, to Salem Media as the “named insured” (“Atlantic
13 Policy”).

14 9. The Atlantic Policy’s policy limit was \$5,000,000 for each claim and
15 in the aggregate, with a retention amount of \$25,000. An actual copy of the contract
16 between the parties is not attached hereto because the contract contains provisions
17 which are confidential, and Atlantic Insurance, as the insurer which issued the
18 policy of insurance, has access to the contract and is therefore fully aware of the
19 terms and conditions of the Atlantic Policy. Salem Media will attach an
20 appropriately redacted copy of the Atlantic Policy if required by the Court.

21 10. The section entitled “Coverage Agreements” of the Atlantic Policy
22 states, in part:

23 **I. COVERAGE AGREEMENTS**

24 **(A) Communications and Personal Injury Liability**

25 The **underwriter** will pay on behalf of the **insured** any **loss** and
26 **defense costs** in excess of the Retention and within the
27 applicable Limit of Liability that the **insured** is legally obligated
28 to pay to third parties because of liability imposed by law or

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assumed under contract arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim**, including but not limited to a **claim** for:

- (1) defamation, however styled in a **claim**, involving disparagement or harm to the character or reputation of any person or organization, including libel, slander, product disparagement or trade libel;
- (2) invasion of or interference with the right of privacy or publicity, however styled in a **claim**, including eavesdropping, intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
- (3) negligent or intentional infliction of emotional distress, outrage or outrageous conduct;

11. The term “claim” is defined in the Atlantic Policy, in part, as follows:

(D) Claim means:

- (1) a judicial or alternative dispute resolution proceeding seeking monetary damages, services or injunctive relief against an **insured** for an **occurrence**;
- (2) a written demand or notice received by an **insured** from any person or entity seeking to hold an **insured** responsible for an **occurrence**;
- (3) a demand for the retraction or correction of **matter**; or
- (4) a written request to toll or waive an applicable statute of limitations relating to a potential **claim** against an **insured**;

12. The term “insured” includes the “**named insured** and any **subsidiary**”.

1 13. The term “subsidiary” is defined as follows:

2 **(T) Subsidiary** means any entity in existence on the Inception Date
3 of this Policy in which the **named insured** owns, directly or
4 through one or more **subsidiaries**, greater than fifty percent
5 (50%) of the issued or outstanding voting securities.

6 14. The term “occurrence” is defined in Endorsement No. 3 to the Atlantic
7 Policy as follows:

8 **Occurrence** means any actual or alleged act, error or omission
9 committed by the **insured** arising directly out of:

10 (1) the release, distribution, licensing, sale, lease or exhibition of
11 **scheduled media** or **advertising** produced by third parties
12 pursuant to a distributor’s agreement;

13 (2) the release, distribution, licensing, sale, lease or exhibition of the
14 **insured’s** previously released film library, if specifically
15 scheduled in the Declarations as **scheduled media**; or

16 **(3) advertising** by or on behalf of the **insured**;
17 provided that any and all such acts, errors or omissions or series
18 of acts, errors or omissions based upon, arising out of, directly or
19 indirectly resulting from, in consequence of, or in any way
20 involving the same or related facts, circumstances, situations,
21 transactions, decisions or events shall be deemed to constitute a
22 single **occurrence**, regardless of the number of repetitions,
23 versions or forms of such **occurrence**, and shall be deemed to
24 have occurred on the date as determined in accordance with
25 Section IV GENERAL CONDITIONS (C) of this Policy.

26 15. The declaration page of the Atlantic Policy states, in Item 3
27 “Scheduled Media” that the term means:

28

1 Distribution of Library Title 2000 Mules that is owned or licensed by
2 the Named Insured and previously insured.

3 16. The term “loss” is defined, in part, as follows:

4 **(H) Loss** means any monetary damages the **insured** is legally
5 obligated to pay as a result of a **claim** covered by this Policy,
6 including: actual damages; statutory damages; punitive,
7 multiplied or exemplary damages if insurable under applicable
8 law; pre-judgment and post-judgment interest; and plaintiff’s
9 attorneys’ fees and costs included as part of a judgment. **Loss**
10 shall not include:

11 17. The term “advertising” is defined in the Atlantic Policy as follows:

12 **(A) Advertising** means the content of **public appearance**, publicity,
13 press releases or materials promoting the **scheduled media**,
14 provided that **advertising** does not include: (1) one-on-one
15 written or oral communications; (2) any lottery, sweepstakes,
16 coupons, contests or games of chance, including but not limited
17 to any redemption of any of the above; or (3) the design, print,
18 images or information contained in or on the packaging or
19 labeling of any goods or products.

20 18. The Atlantic Policy further indicates that Atlantic Insurance “has the
21 right and duty to defend any covered **claim**, even if the allegations of such **claim**
22 are groundless false or fraudulent.”

23 19. Pursuant to the Atlantic Policy “defense costs” are included in the
24 limits of liability.

25 20. Salem Media is informed and believes, and therefore alleges, that
26 Atlantic Insurance drafted the Atlantic Policy without consultation with, or
27 modification by, Salem Media, except to the extent, if any, that Atlantic Insurance
28 might have offered, often for an additional premium, the option of adding other and

1 further provisions to the Atlantic Policy, which provisions were also drafted by
2 Atlantic Insurance. As such, any ambiguity in the Atlantic Policy must be construed
3 against Atlantic Insurance and in favor of coverage for Salem Media.

4 21. The obligations owed by Atlantic Insurance to Salem Media, under the
5 Atlantic Policy, continue in full force and effect as of this date, subject to the terms
6 and conditions thereof. Salem Media has complied with every obligation under the
7 Atlantic Policy, except those which have been excused by the conduct of Atlantic
8 Insurance, if any.

9 **The Andrews Claim**

10 22. On or about October 3, 2022, long after the issuance of the Atlantic
11 Policy, counsel for Mark Andrews (“Mr. Andrews”) sent a letter (“Andrews
12 Letter”) to Salem Media and others claiming that Andrews was defamed in the film
13 entitled 2000 Mules, and its related advertising.

14 23. On October 26, 2022, a lawsuit was filed by Mr. Andrews against
15 Salem Media and others in the United States District Court for the Northern District
16 of Georgia, entitled *Andrews v. D’Souza, et al.*, Case No. 1:22-cv-04259-SDG
17 (“Andrews Action”).

18 24. Subsequently, a First Amended Complaint (“FAC”) was filed in the
19 Andrews Action on December 1, 2022. The FAC alleged the following seven
20 counts: (1) conspiracy in violation of 42 U.S.C. § 1985(3); (2) violation of 52
21 U.S.C. § 10307(B); (3) defamation/defamation per se; (4) invasion of privacy by
22 false light; (5) invasion of privacy by appropriation of likeness; (6) civil conspiracy;
23 and (7) punitive damages.

24 25. The FAC alleges that the film 2000 Mules and its trailer featured video
25 footage of Mr. Andrews, and “falsely describe the video as depicting Mr. Andrews
26 committing crimes.” (The claims alleged in the Andrews Letter, and in the
27 Andrews Action are hereinafter referred to as the “Andrews Claim”.)
28

1 **Atlantic Insurance’s Denial of Coverage for Andrews Claim**

2 26. Salem Media timely tendered the Andrews Letter and Andrews Claim
3 to Atlantic Insurance pursuant to the terms of the Atlantic Policy.

4 27. Salem Media is informed and believes that Atlantic Insurance did not
5 request any other information from Salem Media prior to sending a response stating
6 that Atlantic Insurance had concluded that there is no coverage for the claims set
7 forth in the Andrews Letter and Andrews Action.

8 28. Specifically, by letter dated December 15, 2022 (“Denial Letter”),
9 Emily R. Caron (“Ms. Caron”), a Vice-President, Media Liability Claims, for
10 Atlantic Insurance responded to the tender of the Andrews Claim by Salem Media.

11 29. Salem Media is informed and believes, based on information obtained
12 from the State of Kansas and from the State Bar of California, that Ms. Caron is
13 licensed to practice law in Connecticut but is not licensed to practice law in
14 California.

15 30. Salem Media is informed and believes, and therefore alleges, that
16 Atlantic Insurance assigned responsibility for handling of the insurance claim for
17 the Andrew Claims to Ms. Caron for the Atlantic Policy. Salem Media is informed
18 and believes, and therefore alleges, that the matter was assigned to Ms. Caron
19 because she was the most experienced claims handlers for media liability claims,
20 and because she was familiar with California law as it applied to interpretation of
21 insurance policies, and because she had the knowledge and experience to make
22 strategic decisions regarding coverage, and because she had the authority to act on
23 behalf of Atlantic Insurance in confirming or denying coverage and because they
24 had the ability to fully and clearly communicate such coverage decisions for the
25 strategic benefit of Atlantic Insurance and to know that she was intentionally
26 waiving certain items by her strategic decisions.

27 31. Salem Media is informed and believes, and therefore alleges, that
28 Atlantic Insurance considered all facts, evidence and other information which it

1 believed was necessary and appropriate to make a full coverage determination.
2 Salem Media is further informed and believes, and therefore alleges, that Atlantic
3 Insurance obtained full and complete cooperation from Salem Media in that Salem
4 Media was ready, willing and able to respond to any requests for documents and/or
5 requests for access to individuals who would have additional information which
6 might be relevant to the coverage investigation. Atlantic Insurance did not request
7 any further information from Salem Media, prior to issuing its coverage decision,
8 because Atlantic Insurance made a determination that it already had all the evidence
9 which it believed it needed to make a legally binding coverage decision, including
10 its decision to waive any matters which were not fully investigated or which were
11 represented in a certain manner.

12 32. The Denial Letter cited “Endorsement No. 5 amending Exclusion M
13 of your policy, which excludes **claims**: (M) based upon or arising out of: (1) an
14 **occurrence** that was first committed before the Inception Date of the Policy set
15 forth in ITEM 2(a) of the Declarations...”.

16 33. Atlantic Insurance relied on this exclusion based on the fact “the First
17 Amended Complaint alleges multiple instances of dissemination of **matter** and/or
18 **advertising** prior to the inception date of the policy, as early as April 8, 2022.”

19 34. The Denial Letter then cited to Item 2 of the Declarations of the
20 Atlantic Policy, which sets forth the Scheduled Media for this policy:

21 Distribution of Library Title 2000 Mules that is owned or licensed by
22 the Named Insured and previously insured.

23 Atlantic Insurance contended that it could deny coverage because there was no
24 previous insurance coverage for 2000 Mules, without making any reference to the
25 Chubb Policy.

26 35. Atlantic Insurance’s denial of coverage was wrongful in that
27 Exclusion M of the Atlantic Policy was not applicable because the definition of
28 “occurrence”, as modified by Endorsement No. 3, was limited to “advertising”

1 “produced by third parties pursuant to a distributor’s agreement”, or “advertising”
2 “by or on behalf of the **insured**”. Therefore, the alleged “advertising” before April
3 29, 2022, was not an “occurrence” that took place before the policy period.

4 36. Salem Media’s interpretation comports with the reasonable
5 expectations of Salem Media that coverage could not be eliminated because of the
6 pre-policy “advertising” done by third-parties for which Salem Media, as the film
7 distributor, was not responsible.

8 37. Atlantic Insurance’s denial of coverage was also wrongful in that
9 Atlantic Insurance tried to eliminate coverage based on the early dissemination of
10 “matter”, ignoring the fact that “occurrence” was defined by Endorsement No. 3 to
11 only cover the “release, distribution, licensing sale, lease or exhibition of scheduled
12 media” and specified “advertising”.

13 38. Salem Media had a reasonable expectation that Salem Media’s
14 coverage under the Atlantic Policy could not be eliminated because snippets of the
15 film 2000 Mules were released early by third-parties for which Salem Media was
16 not responsible before the entire film was released for exhibition.

17 39. By its wrongful denial of coverage, Atlantic Insurance has breached
18 the contract represented by the Atlantic Policy. Upon such breach Salem Media
19 was relieved of any further obligation to provide notice to Atlantic Insurance or to
20 otherwise comply with most of the terms and conditions within the Atlantic Policy.

21 40. Pursuant to California Insurance Code section 790.03(h), it is unlawful
22 for an insurer to: (2) fail to acknowledge and act promptly upon tender of a claim;
23 (3) fail to adopt and implement reasonable standards for prompt investigation and
24 processing of claims; (6) compel insureds, such as Salem Media, to institute
25 litigation to recover amounts due; and (13) fail to promptly provide a reasonable
26 explanation for any denial of coverage.

27 41. Subsequent to the denial of coverage, by Atlantic Insurance, Salem
28 Media and Regnery, after incurring a significant amount of defense costs, settled

1 the Andrews Claim for a significant [confidential] amount, with Federal Insurance
2 Company (“Chubb”), which issued a media liability policy to Salem Media as the
3 named insured, agreeing to pay only a portion of the settlement and attorney’s fees
4 and costs incurred by Salem Media and Regnery in the Andrews Action, all of
5 which was subject to a \$500,000 retention under Chubb’s policy. Therefore, Salem
6 Media has been damaged by a significant [confidential] amount.

7 **FIRST CAUSE OF ACTION**

8 **DECLARATORY JUDGMENT**

9 42. Salem Media realleges and incorporates herein by reference, as though
10 set forth in full, paragraphs 1 through 41 of this Complaint.

11 43. Salem Media has incurred costs of defense and settlement costs in
12 relation to the Andrew Claim, not reimbursed by Chubb, which should properly be
13 reimbursed by Atlantic Insurance, and such costs should be paid pursuant to the
14 limits of the Atlantic Policy.

15 44. Atlantic Insurance has stated that there is no coverage for the Andrew
16 Claims and has failed and refused to pay for the costs of defense and settlement
17 reasonably and necessarily incurred by Salem Media.

18 45. There is an actual and present controversy between Salem Media and
19 Atlantic Insurance regarding the extent of the obligations of Atlantic Insurance
20 under the terms of the Atlantic Policy, such that this Court should issue a
21 declaratory judgment in favor of Salem Media, and against Atlantic Insurance,
22 finding that there is, at a minimum, a duty to reimburse Salem Media for the
23 unreimbursed costs of defense and settlement costs for the Andrew Claim.

24 **SECOND CAUSE OF ACTION**

25 **BREACH OF CONTRACT**

26 46. Salem Media realleges and incorporates herein by reference, as though
27 set forth in full, paragraphs 1 through 41 of this Complaint.

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1 47. On or about December 15, 2022, and thereafter, Atlantic Insurance
2 breached the Atlantic Policy by failing and refusing, and continuing to fail and
3 refuse, to defend Salem Media against the Andrew Claim, and to settle the Andrew
4 Claim.

5 48. Salem Media has been damaged in the amount of unreimbursed
6 defense costs and settlement costs which it incurred in the course of responding to
7 and settling the Andrew Claim.

8 49. Salem Media has also been foreseeably damaged by other
9 consequential damages which it has incurred as described herein, and subject to
10 proof.

11 50. Salem Media does not know the precise amount thereof, but Salem
12 Media is informed and believes, based on defense costs already incurred, and
13 therefore alleges, that the total amount in dispute will be in excess of \$75,000 above
14 and beyond the retention amount.

15 **THIRD CAUSE OF ACTION**
16 **BREACH OF THE IMPLIED COVENANT**
17 **OF GOOD FAITH AND FAIR DEALING**

18 51. Salem Media realleges and incorporates herein by reference, as though
19 set forth in full, paragraphs 1 through 41 of this Complaint.

20 52. Atlantic Insurance was obligated to and must pay for defense costs and
21 settlement costs incurred by Salem Media with respect to the Andrew Claim.

22 53. The denial of coverage by Atlantic Insurance was unreasonable
23 because the reasons stated did not preclude coverage and therefore did not preclude
24 a duty to defend. Atlantic Insurance’s conduct in asserting that there was no
25 coverage therefore constitutes a tortious breach of the covenant of good faith and
26 fair dealing.

27 54. As a result of the breaches by Atlantic Insurance, Salem Media has
28 incurred substantial financial obligations to pay amounts for defense and settlement

1 costs which amounts are properly covered under the Atlantic Policy. Salem Media
2 also contends that Salem Media is entitled to the payment of interest from the date
3 on which Atlantic Insurance should have reimbursed Salem Media.

4 55. As a further proximate result of the breaches by Atlantic Insurance,
5 Salem Media has been required to expend attorney's fees and costs for experienced
6 insurance coverage litigation counsel to obtain the insurance policy benefits to
7 which it was entitled under the Atlantic Policy. Pursuant to the principles of
8 *Brandt v. Superior Court*, Salem Media is entitled to reimbursement of such
9 amounts from Atlantic Insurance. Salem Media is informed and believes, and
10 therefore alleges, that the reasonable value of such damages, which will continue
11 through the trial in this matter, will exceed the jurisdictional minimum of this Court.

12 56. The conduct of Atlantic Insurance in denying coverage based on a
13 single exclusion which does not bar a duty to defend, and which was undertaken
14 without a proper legal and/or factual basis, is contrary to the applicable legal
15 principles, and is therefore conduct which is fraudulent, malicious or which, at a
16 minimum, evidences a conscious disregard for the rights of Salem Media.
17 Moreover, Salem Media is informed and believes, and therefore alleges, that such
18 conduct is the regular business practice of Atlantic Insurance and has been utilized
19 against other parties insured by Atlantic Insurance. Atlantic Insurance should
20 therefore be required to pay punitive damages for the purpose of attempting to deter
21 future unlawful conduct by them in an amount subject to determination by the trier
22 of fact.

23 WHEREFORE, Salem Media prays for judgment as follows:

24 ON THE FIRST Cause of Action:

25 1. For a Declaratory Judgment in favor of Salem Media and against
26 Atlantic Insurance on every issue properly brought before this Court.

27 2. Such other and further Declaratory Judgment as may appear proper at
28 the time of determination.

1 ON THE SECOND Cause of Action:

2 3. For all unreimbursed defense costs and settlement costs incurred by
3 Salem Media which amounts are properly covered under the Atlantic Policy, which
4 amount will be in excess of \$75,000.

5 4. For interest on sums which were not timely paid to Salem Media.

6 5. For all other damages incurred by Salem Media as a result of any breach
7 of contract.

8 ON THE THIRD Cause of Action:

9 6. For attorney’s fees and costs incurred in this matter pursuant to the
10 principles of *Brandt v. Superior Court*.

11 7. For punitive damages, subject to proof.

12 ON ALL Causes of Action:

13 8. For interest on all sums where properly owed.

14 9. For costs of suit incurred herein.

15 10. For such other and further relief as the court may deem just.

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17 DATED: May 30, 2024

BROWER LAW GROUP, APC

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By: /s/ Steven Brower

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Steven Brower

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Attorneys for Plaintiff Salem Media Group,
Inc.

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DEMAND FOR JURY TRIAL

Salem Media hereby demands a trial by jury as to each claim and/or issue as to which it is so entitled.

DATED: May 30, 2024

BROWER LAW GROUP, APC

By: /s/ Steven Brower
Steven Brower

Attorneys for Plaintiff Salem Media Group, Inc.