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Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (collectively, “Smartmatic”), through their attorneys, bring this complaint against Defendant Sidney Powell.

**PRELIMINARY STATEMENT**<sup>1</sup>

This is an action against Sidney Powell for the disinformation campaign she embarked on against Smartmatic in November and December 2020. This action is materially identical to a prior action pending in the Supreme Court of the State of New York, *Smartmatic USA Corp., et al. v. Fox Corporation, et al.*, No. 151136/2021 (filed February 4, 2021), except this lawsuit is solely against Ms. Powell. It is commenced in this Court as a precautionary measure to protect Smartmatic, whose reputation and business has been damaged by Ms. Powell, by preserving Smartmatic’s claims under the relevant statute of limitations, and as a prophylactic measure in the event that personal jurisdiction is found lacking in the Supreme Court of the State of New York. This Court has already found personal jurisdiction over Ms. Powell in a related lawsuit for claims arising out of substantially similar events. *US Dominion, Inc. v. Powell*, No. 21-cv-00040 (CJN), 2021 WL 3550974, at \*14–15 (D.D.C. Aug. 11, 2021). Smartmatic also intends to respectfully request a stay of this precautionary action until the personal jurisdiction issue is finally resolved by the New York Courts.

**PARTIES AND RELEVANT NON-PARTIES**

1. Plaintiff Smartmatic USA Corp. is an election technology and software company. The company’s principal place of business is located in Boca Raton, Florida. It is incorporated in

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

Delaware. During the 2020 U.S. election, Smartmatic USA Corp. provided election technology and software for Los Angeles County. Its election technology and software were not used in any other county or State in the 2020 U.S. election.

2. Plaintiff Smartmatic International Holding B.V. owns Smartmatic USA Corp. (100% ownership). The company's principal place of business is located in Amsterdam, Netherlands. It is incorporated in the Netherlands. Smartmatic International Holding B.V. owns multiple companies operating under the Smartmatic brand in almost two dozen countries.<sup>2</sup> Smartmatic International Holdings B.V. did not play any role in the 2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp. for Los Angeles County.

3. Plaintiff SGO Corporation Limited owns Smartmatic International Holding B.V. (100% ownership). The company's principal place of business is located in London, United Kingdom. It is incorporated in the United Kingdom. SGO Corporation Limited is the parent company of Smartmatic International Holdings B.V. SGO Corporation Limited did not play any role in the 2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp. for Los Angeles County.

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

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<sup>2</sup> Smartmatic International Holding B.V. owns election technology and software companies in United States (Smartmatic USA Corp), Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore, Netherlands, Mexico, Ecuador, Brazil, Estonia, Taiwan, and the Philippines as well as branches in Colombia, Argentina, Honduras, Pakistan, Italy, Jamaica, and El Salvador.

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

6. Fox Corporation is one of the most powerful and far reaching media conglomerates in the world. The company's principal place of business is located in New York, New York. It is incorporated in Delaware. Fox Corporation owns Foxcorp Holdings LLC (100% ownership), Foxcorp Holdings LLC owns Fox Television Holdings LLC (100% ownership), Fox Holdings LLC owns Fox Television Stations LLC (100% ownership), and Fox Television Stations LLC owns Fox News Network LLC (100% ownership).<sup>3</sup>

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

8. Fox Corporation and Fox News Network LLC are collectively referred to as "Fox News" in this Complaint. Fox News published over 100 false and misleading statements about Smartmatic during the disinformation campaign. It used the disinformation campaign to its financial benefit by currying favor with the outgoing administration and President Trump's supporters, thereby securing it a position as the "most-watched cable news channel in history."

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

Likewise, Fox News used the disinformation campaign to further boost viewership of Fox News Digital. Fox News Digital secured double-digit increases in all key performance metrics due, in no small part, to the disinformation campaign.

9. Lou Dobbs is an award-winning journalist and host of *Lou Dobbs Tonight*. Fox News describes *Lou Dobbs Tonight* as the “#1 news program on business television, which features a breakdown of the day’s top stories and how they impact the economy.” Mr. Dobbs presents himself to readers and viewers as a provider of factual information – not opinion, rhetoric, or spin. However, contrary to his public persona, he was one of the primary proponents and speakers for the disinformation campaign against Smartmatic. He is a resident of Sussex, New Jersey and Fox News broadcasts *Lou Dobbs Tonight* from New York, New York.

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

11. Jeanine Pirro describes herself as a “highly respected District Attorney, Judge, author & renowned champion of the underdog” and Fox News highlights her as having a “notable legal career” spanning “over 30 years.” She is host of *Justice with Judge Jeanine*. During her program, Ms. Pirro provides “legal insights on the news of the week.” Ms. Pirro presents herself to readers and viewers as a provider of factual information – not opinion,

rhetoric, or spin. However, contrary to her public persona, she was one of the primary proponents and speakers for the disinformation campaign against Smartmatic. Ms. Pirro is a resident of Rye, New York and is licensed to practice law in New York, her place of business (Fox News) is located in New York, New York, and Fox News broadcasts *Justice with Judge Jeanine* from New York, New York.

12. Mr. Dobbs, Ms. Bartiromo, Ms. Pirro and Fox News are collectively referred to as “Fox” in this Complaint. At all relevant times, Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro acted under the direction of Fox News, Fox News authorized and condoned the actions of Mr. Dobbs, Ms. Bartiromo, and Ms. Pirro; and, Fox News ratified the actions of Mr. Dobbs, Ms. Bartiromo and Ms. Pirro.

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

14. Fox and Mr. Giuliani are collectively referred to as “Relevant Non-Parties” in this Complaint. After the November 2020 election, Ms. Powell and Mr. Giuliani conspired to spread a false narrative regarding the outcome of the election by disparaging and defaming Smartmatic. The conspiracy served their personal and financial interest as they benefitted from creating a perception that the 2020 U.S. election had been rigged and stolen by Smartmatic. Ms. Powell and Mr. Giuliani enlisted and used Fox News to further this conspiracy. Fox News also had a financial interest in creating the perception that the 2020 U.S. election had been rigged and stolen by Smartmatic. Ms. Powell, Mr. Giuliani, and Fox agreed to use Fox News’ broadcasting

base in New York, New York to disseminate the disinformation campaign, which ensured the story would reach the broadest audience possible.

### **JURISDICTION & VENUE**

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiffs and Defendant, and the amount in controversy as to each Plaintiff exceeds \$75,000.00, exclusive of interests and costs.

16. This Court has personal jurisdiction over Defendant Sidney Powell pursuant to § 13-423 of the District of Columbia Code because (1) Ms. Powell transacted business within the District of Columbia, including, but not limited to, traveling to and renting hotel rooms in the District of Columbia while filming interviews in which Ms. Powell made her defamatory statements; (2) Ms. Powell caused tortious injury by acts committed within the District of Columbia, including and specifically by making false and defamatory statements about Smartmatic from and within the District of Columbia; and (3) Ms. Powell caused tortious injury by acts committed outside the District of Columbia while regularly doing business within, engaging in persistent conduct within, and deriving substantial revenues from services rendered within the District of Columbia.

17. This Court has personal jurisdiction over Defendant Sidney Powell because she traveled to the District of Columbia shortly after the 2020 U.S. election and then made defamatory statements about Smartmatic from within the District of Columbia, including at a press conference on November 19, 2020 and during various media appearances in November and December 2020. Ms. Powell made at least one defamatory media appearance giving rise to the case from a hotel room in the Trump International Hotel in Washington, D.C. On information and belief, Ms. Powell stayed in the Trump International Hotel in Washington, D.C. during much of the time period relevant to this case. In addition, Ms. Powell regularly travels to and transacts

business within the District of Columbia, and she derives substantial revenue from such services rendered within the District of Columbia, including by soliciting funds to her fundraising websites and by representing Michael Flynn in the District Court for the District of Columbia.

18. Requiring Ms. Powell to litigate these claims in the District of Columbia does not offend traditional notions of fair play and substantial justice and is permitted by the Due Process Clause of the United States Constitution. Smartmatic's claims arise in part from defamatory statements that Ms. Powell made about Smartmatic from and within the District of Columbia, including at a press conference on November 19, 2020 and during various media appearances in November and December 2020. Ms. Powell avails herself of numerous privileges in the District of Columbia, including those set forth above.

19. This Court has already found personal jurisdiction over Ms. Powell in a related lawsuit for claims arising out of substantially similar events. *US Dominion, Inc. v. Powell*, No. 21-cv-00040 (CJN), 2021 WL 3550974, at \*14–15 (D.D.C. Aug. 11, 2021).

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims in this Complaint occurred in this District and, as discussed above, because Ms. Powell is subject to the Court's personal jurisdiction in this District.

### **FACTUAL ALLEGATIONS**

21. Smartmatic is a victim of Ms. Powell's desire for fame and fortune. Ms. Powell and the Relevant Non-Parties – journalists and lawyers – are ethically bound to provide factually accurate information. They each abused the trust placed in them by viewers and readers in the United States and around the world. Ms. Powell's and the Relevant Non-Parties' disinformation campaign was not only a betrayal of their ethical obligations that caused irreparable damage to Smartmatic, but it contributed to an erosion of trust and civility in the country.

**I. Smartmatic's Role as an Election Technology Company**

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

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

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

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

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

26. Today, Smartmatic provides end-to-end election services to local, state, and national governments. Its portfolio of products has grown to include a comprehensive suite of

technologies and services to make every phase of the election process more efficient and transparent.

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

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

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

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

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

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

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

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

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

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

37. In 2013, Smartmatic's technology processed more than 50 million ballots in just 10 hours in the Philippines. Venezuela organized its Presidential elections in 34 days (record time) thanks to Smartmatic technology and services. All parties audited the voting platform 15 times, contributing to the public's trust in the election results. And, in that year, Haiti selected Smartmatic to modernize Haiti's national ID and civil registry system.

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

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

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

41. In 2017, Sierra Leone used Smartmatic's technology to modernize its national civil registry by equipping 2,600 registration sites. Argentina used Smartmatic's biometric

technology to facilitate voter authentication. Smartmatic also helped the Lombardy region in Italy conduct the country's first fully automated election. Armenia used Smartmatic's biometric devices to manage voters in polling centers in the country's Parliamentary Elections. And, in that same year, Estonia set a new record for online voting participation at 31% during the local elections held in October using Smartmatic's election technology, which was developed with Smartmatic's local partner (Cybernetica).

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

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

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

44. The secret to Smartmatic's success has been showing its commitment to its mission statement: to provide secure, reliable, and auditable election technology and software. Counties, states and countries that choose to use Smartmatic's election technology and software

understand that they are using a technology that has processed over 5 billion votes without any security breaches and with an auditable paper trail demonstrating that the elections were not rigged, hacked, or stolen.

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

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

47. Finally, Smartmatic is also fortunate to have been recognized as one of the best election technology and software companies in the world. For example, in 2005, The Carter Center and the European Union identified Smartmatic's election technology as one of the most secure, reliable and auditable election technologies in the world. In 2012, former President Jimmy Carter called Smartmatic's solution "the best voting system in the world." These accolades and recognitions by some of the world's foremost election authorities are yet another key to Smartmatic's success. Its reputation as one of the "best voting systems in the world" is important for expanding existing relationships and developing new relationships with counties, states and countries looking to improve their election technology.

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

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

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

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

50. Since 2009, the Los Angeles County’s Registrar-Recorder/County Clerk (the “Department”) had been working to improve the voting experience through its Voting Solutions for All People (“VSAP”) initiative. Given the size, complexity and demographics of Los Angeles County, one of the Department’s top priorities was to remove barriers and obstacles that made it difficult for voters to participate in the electoral process.

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

- a. Redesigned Vote-by-Mail (“VBM”) Ballot: The new VBM ballot was introduced to County voters in the November 2018 General Election. The new full-face VBM ballot features larger font sizes and clearer instructions making it easy to read, complete and return. In addition, postage is prepaid, so there is no longer a need to attach a stamp. Voters who prefer to drop off their ballot in-person can do so at any VBM drop-off location or vote center throughout the County.
- b. Redesigned Ballot Marking Device (“BMD”): The BMD replaces the County’s legacy InkaVote system. The BMD allows every voter to customize their experience with both visual and audio access in thirteen languages and offers accessibility features that provide voters with disabilities equality and independence in casting ballots. For auditability and security, the BMDs produce human-readable paper ballots that exceed national voting system security standards.
- c. New Electronic Pollbook (“e-Pollbook”): The e-Pollbook replaces the printed roster that was previously used at voting centers for voters to check-in. The e-Pollbook is connected through a secure private network to the State of California database of eligible voters. This allows voters to check in and cast their ballot at any vote center in the County. The e-Pollbook is updated in real-time and will indicate if a voter has already cast a ballot ensuring voting integrity. In addition, the e-Pollbook enables eligible voters to register to vote at any vote center or update their registration.

- d. New Interactive Sample Ballot (“ISB”): The ISB is a new convenient option to expedite the in-person voting experience. The ISB allows the voter to mark their sample ballot digitally through a web-based application accessible through the Department’s website. Upon completing selections, a Quick Response Code is generated producing a Poll Pass that the voter can print or save onto a mobile device, and which the voter can then take to any vote center to be scanned on the BMD. The voter’s selections will be imported onto the BMD allowing the voter to once again review their selections and make any further changes prior to casting their ballot.
- e. Redesigned Modern Tally System: The Tally System is an innovative solution for paper ballot scanning and tabulation that is specifically designed to support Los Angeles County’s need to process millions of ballots. It utilizes high-speed scanners to capture high-definition images of ballots and a message brokering architecture to process large volumes of digital images quickly and accurately. From paper ballot to digital image to final cast vote record, the Tally System captures data about how each ballot is read and processed, allowing for the tracking and auditing of individual ballots to verify the integrity and accuracy of election results.
- f. Redesigned Vote Centers: Vote centers were located throughout the entire County. They each underwent comprehensive surveys and assessments to ensure they met Americans with Disabilities Act accessibility requirements and other qualifying criteria such as on-site parking availability, convenient access to public transit, and hours of operation.

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

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

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

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

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

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

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

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

This year, LA County implemented new voting technology. Compared to voting in previous elections, technology made voting in this primary:

- Much easier: 57.5%
- A bit easier: 17.6%
- The same: 13.2%
- A bit more difficult: 7.4%
- Much more difficult: 4.3%

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

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

- Greatly distrust: 4.0%

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

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

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

59. The November general election in Los Angeles County from a technology perspective was flawless. A County official described the system as a "success." There were no serious problems during the election in Los Angeles County, and voters experienced reduced lines and reduced delays. No questions were raised about security, reliability or auditability of the results in Los Angeles County. Expectations were high, and Smartmatic exceeded those expectations.

60. Smartmatic was thrilled with its success in the Los Angeles County election. Counties and states in the United States and countries across the world pay attention to Los

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

**D. Smartmatic quietly celebrated its success in Los Angeles without knowing what was coming from Ms. Powell, Mr. Giuliani, and Fox.**

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

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

63. Given that Smartmatic had no role in the general election outside of Los Angeles County, Smartmatic had no reason to be concerned about being embroiled in a discussion about election outcomes in some of the states where the vote tally was closer than it was in California.

For example, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin were states where the vote tally between the Democratic and Republican nominees for President and Vice President were much closer than the margin in California. But, Smartmatic had no role whatsoever in the elections that took place in those states.

- a. Nevada used election technology supplied by Dominion and Election Systems & Software (“ES&S”). (Nevada Secretary of State, *Voting System Testing and Security List* (Exhibit 74)).
- b. Arizona used election technology supplied by multiple companies, including Dominion and ES&S. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 69)).
- c. Georgia used election technology supplied by Dominion. (8/9/19 Georgia Secretary of State, *Dominion Voting Systems Certification* (Exhibit 54)).
- d. Pennsylvania certified multiple election technology companies for the 2020 election, including Dominion, ES&S, Unisyn Voting Systems, ClearBallot Group, and Hart InterCivic. (Pennsylvania Department of State, *Electronic Voting Systems Certified after January 1, 2018* (Exhibit 64)).
- e. Michigan used election technology supplied by Dominion, ES&S, and Hart InterCivic. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 60)).
- f. Wisconsin approved multiple election technology companies for the 2020 election, including Dominion, ES&S, Sequoia Voting Systems, Premier Election Solutions, Populex, Vote-PAD, and ClearBallot Group.

(Wisconsin Election Commission, *Voting Equipment List by Municipality February 2020* (Exhibit 71)).

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

## **II. Ms. Powell's, Mr. Giuliani's, and Fox's Disinformation Campaign Against Smartmatic**

65. Joe Biden and Kamala Harris won the 2020 U.S. election for President and Vice President. The Democratic candidates secured 306 electoral votes. The Republican candidates secured 232 electoral votes. On the popular vote, the Democratic candidates received 81 million votes compared to 74 million for the Republican candidates. Among other states, the Democratic candidates won each of the states discussed above – Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. The victories for the Democratic candidates in those states were verified and re-verified by each of their respective Secretaries of State.<sup>4</sup>

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

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

- a. Nevada: Secretary of State Barbara Cegavske reported: “All voting machines undergo extensive pre-election and post-election examination to ensure they function as expected. The NV Gaming Control Board tests and certifies our systems. The post-election audits and recounts conducted in Nevada confirmed that the machines accurately tabulated the votes cast.”
- b. Arizona: Governor Doug Ducey stated: “We have some of the strongest election laws in the country, laws that prioritize accountability and clearly lay out procedures for conducting, canvassing, and even contesting the results of an election.”
- c. Georgia: Secretary of State Brad Raffensperger reported: “Georgia’s historic first statewide audit reaffirmed that the state’s new secure paper ballot voting system accurately counted and reported results.”
- d. Pennsylvania: Governor Tom Wolf reported: “To say there was voter fraud is a lie. To say the election was unconstitutional is a lie. To say our voting systems weren’t secure is a lie.”
- e. Michigan: Secretary of State Joselyn Benson reported: “We have not seen any evidence of fraud or foul play in the actual administration of the election. . . What we have seen is that it was smooth, transparent, secure and accurate.”

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

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

The members included:

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

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

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

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

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

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

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

73. President Trump and Vice President Pence had (and continue to have) a significant and loyal following. President Trump and Vice President Pence received approximately 70 million votes during the 2020 U.S. election. President Trump had over 88 million Twitter followers. Their popularity, particularly President Trump’s popularity, was a tremendous asset. Ms. Powell and Mr. Giuliani decided to take advantage of that popularity for their own benefit.

74. Shortly after the election, Ms. Powell and Mr. Giuliani decided they would spread a story that the 2020 U.S. election had been rigged in favor of Joe Biden and Kamala Harris and

stolen from Donald Trump and Michael Pence. They also decided that the story would involve manipulation of election technology in select States – ultimately, Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin.

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

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

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

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

78. Ms. Powell and Mr. Giuliani needed a platform to use to spread their story. They found a willing partner in Fox News. Fox News had its own problems. Fox News had tethered its

financial success to President Trump and his followers. But, prior to the election, Fox News was losing ground as the news outlet of choice for President Trump and his followers. Indeed, Fox News was scorned by President Trump and his followers when it called the State of Arizona in favor of Joe Biden and Kamala Harris. Fox News needed a way to reclaim its favored status with President Trump and his followers. Enter Ms. Powell and Mr. Giuliani.

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

Mr. Dobbs: Let's talk about, just for a moment, an update on Dominion and how important do you believe the concerns that are being expressed of a number of states about the ability of these machines not to be hacked?

Mr. Giuliani: Well, first of all, the machines can be hacked. There's no question about that. Their machines can be hacked, but it's far worse than that. Dominion, Dominion is a company that's owned by another company Smartmatic, through its intermediary company Indra. Smartmatic is a company that was formed way back in 2004, 2003, 2004. You're gonna be astonished when I tell you how it was formed. It was formed really by three Venezuelans, who were very close to [ ] dictator, Chávez, of Venezuela. And it was formed in order to fix elections. That's the, that's the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic software. So the votes actually go to Barcelona, Spain. So we are using a foreign company that is owned by Venezuelans who are close to, were close to Chávez, are now close to Maduro, have a history, they were founded as a company to fix elections. They have a terrible record and they are extremely hackable.

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<sup>5</sup> In addition to transcripts of the broadcasts, Smartmatic submits copies of the videos of the broadcasts as exhibits to this Complaint. Each broadcast video will be designated as the "A" exhibit to its corresponding broadcast transcript on Smartmatic's Notice of Filing, filed with this Complaint. In accordance with Local Rule 5.4(e)(1), Smartmatic's undersigned counsel will maintain in their possession videos of the broadcasts. Smartmatic will provide the Court and Ms. Powell with videos of the broadcasts.



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

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

Mr. Giuliani: I’m working on the part of the case which is demonstrating how many illegal votes were cast. And I’m way beyond the margin that I need in Pennsylvania or Michigan to overturn the vote there. We’re up to about 623 thousand unlawful ballots in Pennsylvania and about 320 unlawful ballots in Michigan. . . This was, this was a stolen election. I know, I know the phony elites don’t want to hear it, but this was a stolen election. The same pattern exists in Nevada, Arizona, Georgia, [and] Wisconsin....

Mr. Dobbs: This looks to me like it’s the end of what has been a four and a half, the end game to a four and a half effort, four and a half year long effort to overthrow the President of the United States. It looks like it’s exactly that, that there is a, these are all parts of a piece here.

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

**C. Ms. Powell, Mr. Giuliani, and Fox engaged in a widespread disinformation campaign against Smartmatic and its election technology and software.**

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

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

Ms. Pirro: Welcome back. The election results in several battle ground states continue to be under intense focus as allegations of voter fraud are

being investigated. Trump campaign attorney and former federal prosecutor Sidney Powell joins me now with more. All right good evening, Sidney, thank you so much for joining us. I'm – I'm sure you're very busy now. Can you give me some idea of what you're working now and what exactly you are doing on the Trump [team] in his effort to identify problems with the election?

Ms. Powell: I am working on the massive aspect of system wide election fraud, definitely impacting the swing states and likely going far beyond that. We're talking about the alteration and changes in millions of votes, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the Dominion and Smartmatic software, that of course, we would not expect Dominion and Smartmatic to admit. . . [W]e are collecting evidence through a fire hose as hundreds of American patriots across the country are stepping forward with what they know about this issue. Including some, well, including some people that are taken [sic] great risk to do it.



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

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

conspiracy that should be investigated by military intelligence for its national security implications.

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

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

Ms. Bartiromo: Is the President right now in this tweet conceding this election?

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



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

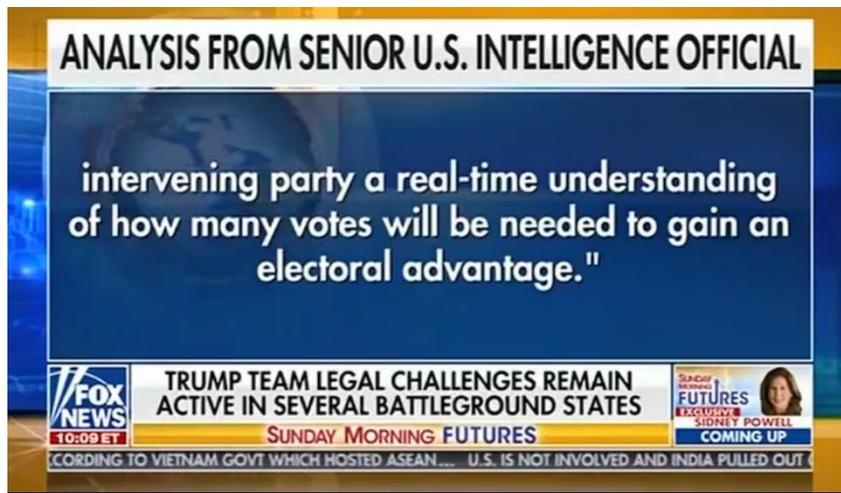
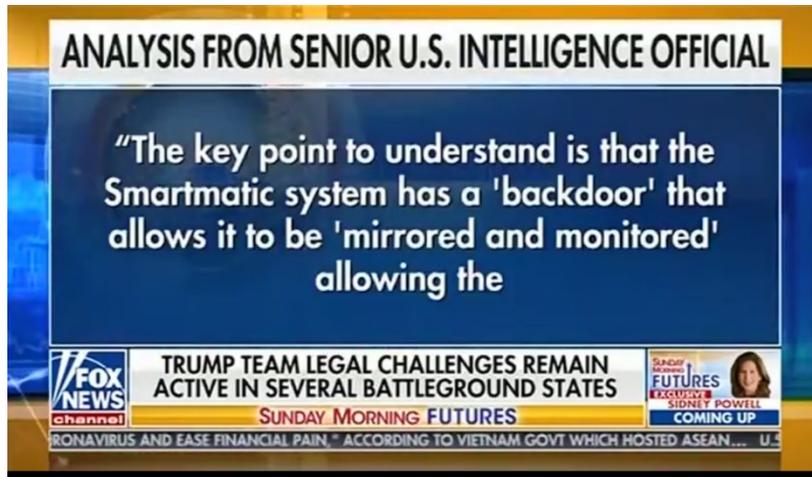
Ms. Bartiromo: Look, I want to show this graphic of the swing states [] that were using Dominion and this, this software, this Smartmatic software. I mean, you just said it all. This is a Smartmatic, a Delaware entity registered in Boca Raton, Florida, activities in Caracas, Venezuela. The voting machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. And I have a graphic showing the states where they stopped counting, which I thought

was also strange to stop counting in the middle of election night. One source says that the key point to understand is that the Smartmatic system has a backdoor that allows it to be [] or that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of how many votes will be needed to gain an electoral advantage. Are you saying the states that used that software did that?

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

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

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



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

90. Ms. Bartiromo then turned her attention to Ms. Powell, who was also on her program that morning. On information and belief, Ms. Powell was in Washington, D.C. at the time of the broadcast and conducted the interview in Washington, D.C. Ms. Bartiromo and Ms.

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

Ms. Bartiromo: Sidney, thanks very much for being here. We appreciate your time this morning. I want to get right into it. We just heard about the software made by Smartmatic from Rudy. And I want to get your take on what you – what you and I spoke about just a few minutes ago and that is a gentleman named Peter Neffenger. Tell me how he fits into all of this.

Ms. Powell: Yes. Well he is listed as it's former Admiral Peter Neffenger or retired Admiral Peter Neffenger. He is President and on the board of directors of Smartmatic, and it just so happens, he's on Mr. Biden's presidential transition team that's gonna be non-existent because we're fixing to overturn the results of the election in multiple states. And President Trump won by not just hundreds of thousands of votes, but by millions of votes that were shifted by this software that was designed expressly for that purpose. We have sworn witness testimony of why the software was designed. It was designed to rig elections. . . [T]his is a massive election fraud. And I'm very concerned it involved not only Dominion and its Smartmatic software, but that the software essentially was used by other election machines also. It's the software that was the problem.



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

Ms. Bartiromo: Now, I have spoken with a few whistleblowers myself this weekend. And one source who is an IT specialist, told me that he knew the software and specifically advised people in Texas, officials in Texas, not to use it. And yet, he was overruled. He said that there was an unusual patch that was put into the software while it was live, and it's highly unusual to put a patch in there. Is that what you're referring to? Tell me how it's done and how these backdoors work.

Ms. Powell: Okay. That's part of it. They can stick a thumb drive in the machine or upload software to it, even from the internet. They can do it from Germany or Venezuela, even. They can remote access anything. They can watch votes in real time. They can shift votes in real time. We've identified mathematically the exact algorithms they used and plan to use from the beginning to modify the votes in this case to make sure Biden won. . . Well, it's massive election fraud.

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

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

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

fraud and inexplicable mathematical ratios that tell us very quickly, there's something terrible afoot here.

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Mr. Dobbs: This is the worst in our country's history. There is no election in our presidential history, our nation's history in which there were so many anomalies, so many irregularities and so much clear evidence of fraud.

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

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



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

Ms. Powell: Well, my other thought is that as soon as the Smartmatic system changed the votes that they wanted for their desired candidate, by the time they finished, they achieved a convincing but narrow victory of the certain number of votes they want for their candidate. This person saw [] by what is his known experience exactly what was happening there [Venezuela], was happening here.

Mr. Dobbs: It’s a, it is a deeply, deeply troubling election. As I said earlier, the worst in this country’s history bar none. And we have seen official, official investigative and Justice Department officials slow to move, and it is infuriating to everyone. . .

Ms. Powell: Now we’ve seen willful blindness. They have adopted a position [] of willful blindness to this massive corruption across the country. And the Smartmatic software is in the DNA of every vote tabulating company’s software and systems.

Mr. Dobbs: Yeah, Sid, it is – it is more than just willful blindness. This is people trying to blind us to what’s going on. We don’t even know who the hell really owns these companies, at least most of them. That’s got to change and we’ve got to find out exactly what’s going on. And thank God we’ve got a President who will stay in the fight all the way through until we get those answers. Sidney Powell, thanks so much. We appreciate it always.



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

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

Ms. Bartiromo: And what are you finding so far? What do you think went on here? Because when we spoke on Sunday, we talked about the software made by Smartmatic that was changing [] votes from Trump to Biden.

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Mr. Giuliani: People probably don’t understand these ballot countings [sic] well enough to realize what a tremendous deprivation of rights this is. We have no idea if these 670,000 ballots were put in by Mickey Mouse, or Biden’s cousin, or by a Democratic office holder, or by some criminal who got paid money [] to produce 10,000. There are machines that can get you signatures on a 100,000 ballots in a half-hour. And that’s possibly what happened in Michigan when they brought the 100,000 ballots in the middle of the night. This is a horrendous fraud. It spans the country. It is isolated to Democrat cities. They were smart to do it in cities - it’s like the old west - cities they control, where they control the workers.

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



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

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



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

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

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

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

101. On November 19, Mr. Dobbs continued his role in the disinformation campaign on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)). He started his program by playing portions of a press conference held by Ms. Powell and Mr. Giuliani in Washington, D.C. earlier that day, introducing the clips with his own statements.

Mr. Dobbs: The President’s attorney, Rudy Giuliani, leading the charge today. Giuliani says the radical Dems’ control and power was consolidated in a coordinated effort to steal the election from President Trump.

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Mr. Giuliani: And what emerged very quickly is – this is not a singular voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern. Which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities. And specifically focused on, as you would imagine, big cities controlled by Democrats, and particularly focused on big cities that have a long history of corruption.

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Mr. Dobbs: Another issue at the center of today’s new conference, the use of Dominion voting machines and Smartmatic software. Defense attorney Sidney Powell cited a whistleblower’s stunning affidavit. It says Smartmatic’s technology was used to rig elections in Venezuela. It is now in the quote, “DNA of every vote tabulating company software and system.” Smartmatic and Dominion deny those charges. But Sidney Powell argues that algorithms in the Smartmatic software were used to change results in the presidential election.

Ms. Powell: The software itself was created with so many variables and so many backdoors that can be hooked up to the Internet or a thumb drive stuck in it or whatever. But one of its most characteristic features is its ability to flip votes. It can set and run an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden, which we might never have uncovered, had the votes for President Trump not been so overwhelming in so many of these states that it broke the algorithm that had been plugged into the

system. And that’s what caused them to have to shut down in states they shut down in. That when they came in the backdoor with all the mail-in ballots, many of which they had actually fabricated.



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

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

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

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

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

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

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



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

Ms. Powell: But like I said, it's just a massive amount of information now. We've got the – well, let me put it this way, there's thousands of people in federal prison on far less evidence of criminal conduct than we have already against the Smartmatic and Dominion Systems companies. And most of the companies in the country run the same sort of software or have that code in their software. So it's farther, it's more widespread.

Mr. Dobbs: And incredibly, one of the benefits of this may be that we will learn who actually owns these companies. We have just watched, to everyone in this audience tonight, our election is run by companies, the ownership of which we don't know. Sidney Powell is among those trying to change all of that. Sidney Powell, thank you so much for being with us. We appreciate it.



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

Ms. Pirro: The President’s lawyers [are] alleging a company called Dominion, which they say started in Venezuela with Cuban money and with the assistance of Smartmatic software, [has] a backdoor [that] is capable of flipping votes. And the President’s lawyers [are] alleging that American votes in a presidential election are actually counted in a foreign country. These are serious allegations, but the media has no interest in any of this, but you and I do, as we should, because 73 million Americans voted for Donald Trump.

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

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

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



105. On November 21, Mr. Dobbs also appeared on *Watters' World*, another program broadcast by Fox News, to spread the disinformation campaign's theme that the 2020 U.S. election had been stolen by a cyber-attack. (*Watters' World*, November 21, 2020 (Exhibit 30)).

Mr. Dobbs stated:

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

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

Mr. Dershowitz: The other legal theory they [the Trump campaign] have, which is a potentially strong one, is that the computers, either fraudulently or by glitches, changed hundreds of thousands of votes. There, there are enough votes to make a difference, but I haven't seen the evidence to support that ...

Ms. Bartiromo: You just mentioned the computers. This is, has to do with Smartmatic election software .... Also in terms of the computers and the software, Smartmatic election software was developed, Sidney Powell says, in Venezuela, with porous security and built-in functionality allowing the administrators to override security features. We haven't seen this, so we don't know, but this is the kind of evidence that they say they have, your reaction.

107. Ms. Bartiromo laid out a series of claims being made about Smartmatic – multiple times by Ms. Powell, Mr. Giuliani, and Fox on Fox News over the last several days – and then casually acknowledged that no one at Fox has seen any evidence (“[w]e haven't seen this, so we don't know”). Mr. Dershowitz acknowledged in response: “[T]hey're going to need overwhelming evidence and I haven't seen it.” Ms. Powell, Mr. Giuliani, and Fox had not seen any evidence either. That did not stop them from making the claims time and time against on Fox News.

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

Mr. Dobbs: Big news now: the country's largest voting machine groups have close ties to a government agency that disputes any regularities [sic] in this year's election.

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

109. On December 10, Mr. Dobbs and Ms. Powell returned for another round of disinformation on *Lou Dobbs Tonight*. (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38;39)). Ms. Powell joined the program from a hotel room she rented in the Trump International Hotel in Washington, D.C. Mr. Dobbs' introduced Ms. Powell as a "distinguished attorney, former federal prosecutor .... and as we all know, a great American." Mr. Dobbs then displayed the names of the "four individuals [who Ms. Powell says] led the effort to rig this election." Antonio Mugica, CEO of SGO Corporation Limited, was one of the four individuals displayed by Mr. Dobbs. He then asked Ms. Powell how Mr. Mugica and the other three had rigged the election.

Ms. Powell: Well, Lou, they designed and develop[ed] the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the votes even as it's happening. We're finding more and more evidence of this. We now have reams and reams of actual documents from Smartmatic and Dominion, including evidence that they planned and executed all of this. We know that \$400 million of money came into Smartmatic from China only a few weeks before the election, that there are George Soros connections to this entire endeavor. Lord Malloch Brown [Chairman of SGO Corporation Limited] was part of it, along with the other people from Dominion. . . We know that one of the Smartmatic people has, went to Tarrant County, Texas and turned that county blue after having been an executive with Smartmatic and all of a sudden this one election Tarrant County is purportedly blue. We have evidence of how they flip the votes, how it was designed to flip the votes, and that all of it has been happening just as we have been saying it has been.

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Ms. Powell: [W]e are still reviewing the massive amount of documents that we have, but we have communications between them and all different kinds of messages that indicate their involvement in it. It's a massive amount of additional information to go through that's only been in our hands a short time, but we will be producing more and more of it. It will be coming out more by the day. And then also the connections to the Chinese and other countries that were attacking us in this massive cyber Pearl Harbor, as we called it.

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Ms. Powell: [W]e've known from early on in our independent investigation that the entire system was created for the benefit of Venezuela and Hugo Chávez to rig elections to make sure he continued winning. And then it was passed onto Mr. Maduro to do the same.

110. Mr. Dobbs transitioned to a break by stating: "We're going to examine in some detail the reasons for what is apparently a broadly coordinated effort to actually bring down this President by ending his second term before it could begin." On his return, Mr. Dobbs again drew focus to the screen with the names of four individuals, including Mr. Mugica. He then stated: "Because it's important as we look at these four names, we're talking about [a] very large, a very large foreign intrusion and interference in the, in the election of 2020."

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

Mr. Dobbs: [I]t's outrageous that we have an Attorney General, Sidney, who said that he sees no sign of, if any, significant fraud that would overturn the election. We had a head of the Cyber Intelligence Unit for the Department of Homeland Security who is suing some people apparently for saying that his report basically was, it was nonsense when he declared it was the most secure election in the country's history. What are we dealing with here and how can we get to this if we have an Attorney General who has apparently lost both his nerve and his commitment to his oath of office and to the country. We have an FBI director who seems to be [as] politically corrupt as anyone who preceded him, and a Homeland Security Department that doesn't know what the hell it's talking about and is spending more time

playing politics, at least as it applies to Mr. Krebs, than securing the nation. Your thoughts?

Ms. Powell: [] There's no explanation for the way the FBI has treated witnesses. I mean, good American citizens who've been brave enough to come forward with direct evidence of things like thousands of ballots moving from one state to another in the middle of the night to do what is called back-filling into the machines so that they can perpetrate their fraud because President Trump won so many votes, he blew up their algorithm. The American people blew up the algorithm they created before the election to shave votes from Biden and give them to Trump. And we're now seeing direct evidence of that happening in multiple counties, in multiple states and we know it happened across the country.

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

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

Ms. Powell: Awesome.

Mr. Dobbs: We'll work overnight. We will, we will take up whatever air we're permitted beyond this broadcast. But we have to get to the bottom of this.

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Mr. Dobbs: How much time do you need to get that evidence to this broadcast and we'll put it on the air.

Ms. Powell: I will get you some more information that's just stunning tonight.



113. She did not. Ms. Powell did not provide evidence to Mr. Dobbs showing that Smartmatic rigged the 2020 U.S. election for Joe Biden and Kamala Harris. Ms. Powell did not provide evidence to Mr. Dobbs showing that Smartmatic played any role in the 2020 election outside of Los Angeles County. Mr. Dobbs never returned to the airways to display the “tremendous evidence” showing Smartmatic had participated in a massive fraud. Ms. Powell, Mr. Giuliani, and Fox had never seen such evidence. It does not exist. Ms. Powell’s, Mr. Giuliani’s, and Fox’s story was fiction from start to finish. They knew it too.

114. Eventually, Mr. Dobbs did return to the airways with another story about Smartmatic. So did Ms. Bartiromo and Ms. Pirro. On December 18, after receiving a retraction demand letter from Smartmatic, Mr. Dobbs played a prerecorded interview with Eddie Perez, the Global Director at the Open Source Election Technology Institute. (*Lou Dobbs Tonight*, December 18, 2020 (Exhibit 45)). Ms. Bartiromo and Ms. Pirro played the prerecorded interviews on December 20. (*Sunday Morning Futures with Maria Bartiromo*, December 20, 2020 (Exhibit 46); *Justice with Judge Jeanine*, December 20, 2020 (Exhibit 47)). During the interview, Mr. Perez explained that there was no evidence in support of the claims that Ms. Powell, Mr. Giuliani, and Fox had been making about Smartmatic for over a month.

**D. Ms. Powell, Mr. Giuliani, and Fox used multiple platforms to spread disinformation**

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

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

116. Ms. Powell, Mr. Giuliani, and Fox used Fox News' broadcasting power from New York to disseminate the disinformation campaign to the largest audience possible. But, Fox News did not limit itself to the evening and morning news programs. Fox News used all of its various New York-based platforms to disseminate the disinformation campaign.

- a. November 12: Mr. Dobbs and Mr. Giuliani appear on *Lou Dobbs Tonight* discussing Smartmatic's role in election fraud. (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- b. November 14: Mr. Dobbs tweets: "Read all about Dominion and Smartmatic voting companies and you'll soon understand how pervasive this Democrat electoral fraud is, and why there's no way in the world the 2020 Presidential election was either free or fair. #MAGA @realDonaldTrump #AmericaFirst #Dobbs" (Twitter, @LouDobbs, November 14, 2020 (Exhibit 2)).
- c. November 14: Ms. Pirro and Ms. Powell appear on *Justice with Judge Jeanine* discussing Smartmatic's role in a huge criminal conspiracy. (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).
- d. November 14: Fox News posts video and transcript of *Justice with Judge Jeanine* on its website discussing Smartmatic's role in a huge criminal conspiracy. (Fox News Website, November 14, 2020 (Exhibit 4)).
- e. November 15: Ms. Bartiromo, Mr. Giuliani and Ms. Powell appear on *Sunday Morning Futures with Maria Bartiromo* discussing Smartmatic's role in election fraud. (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- f. November 15: Ms. Bartiromo and Representative Jim Jordan appear on *Sunday Morning Futures with Maria Bartiromo* discussing Smartmatic's role in manipulating votes. (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Second Video) (Exhibit 6)).

- g. November 15, Fox News posts video of *Sunday Morning Futures with Maria Bartiromo* to its website with caption: “Giuliani: Trump is contesting the election ‘vigorously’ in the courts.” (Fox News Website, November 15, 2020, Exhibit 7)).
- h. November 15: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: “Giuliani: Trump is contesting the election ‘vigorously’ in the courts.” (Twitter, @MariaBartiromo, November 15, 2020 (First Tweet) (Exhibit 8)).
- i. November 15: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: “Why doesn’t Biden camp want to know truth about voting irregularities?” (Twitter, @MariaBartiromo, November 15, 2020 (Second Tweet) (Exhibit 9)).
- j. November 15: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: “Attorney Powell on election legal challenge that remain active in several states.” (Twitter, @MariaBartiromo, November 15, 2020 (Third Tweet) (Exhibit 10)).
- k. November 15: Ms. Bartiromo tweets: “#BreakingNews the show will repeat @FoxBusiness 6pm et today” and includes tweet from BlueSkyReport that states: “Outrageous: Peter Neffenger is on the Board of Smartmatic and is on Biden’s transition team. @MariaBartiromo w/@SidneyPowell1 exposing massive Foreign Election Fraud.” (Twitter, @MariaBartiromo, November 15, 2020 (Fourth Tweet) (Exhibit 11)).
- l. November 15: Fox News posts video and transcript of *Sunday Morning Futures with Maria Bartiromo* to its website with caption: “Why doesn’t

Biden camp want to know the truth about voting irregularities?” (Fox News Website, November 15, 2020 (Exhibit 12)).

- m. November 16: Ms. Bartiromo posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: Attorney for President Trump explains strategy for election lawsuits.” (Twitter, @MariaBartiromo, November 16, 2020 (Exhibit 13)).
- n. November 16: Mr. Dobbs and Republican National Committee Chair Ronna McDaniel appear on *Lou Dobbs Tonight* discussing Smartmatic’s role in manipulating results of election. (*Lou Dobbs Tonight*, November 16, 2020 (First Video) (Exhibit 14)).
- o. November 16: Mr. Dobbs and Ms. Powell appear on *Lou Dobbs Tonight* discussing Smartmatic’s role in massive corruption of election. (*Lou Dobbs Tonight*, November 16, 2020 (Second Video) (Exhibit 15)).
- p. November 16: Mr. Dobbs tweets: “There’s never been a national election with this many widespread irregularities, anomalies, screw ups, disruption and plain cheating in American history! We must investigate and fix it all if we’re to remain a constitutional Republic.” and includes a tweet from Donald J. Trump. (Twitter, @LouDobbs, November 16, 2020 (Exhibit 16))
- q. November 16: Fox News anchor Laura Ingram posts video of *Sunday Morning Futures with Maria Bartiromo* using Twitter with caption: “Sidney Powell says that ‘the evidence on use of ‘Dominion System’ is coming in so fast she ‘can’t even process it all.’” (Twitter, @IngramAngle, November 16, 2020 (Exhibit 17)).

- r. November 16: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: “Electoral Fraud: @SidneyPowell1 says she has firsthand evidence that Smartmatic voting software was designed in a way to change the vote of a voter without being detected.” (Twitter, @LouDobbs, November 16, 2020 (Exhibit 18)).
- s. November 16: Ms. Bartiromo post video of *Sunday Morning Futures with Maria Bartiromo* using Facebook with caption: “Attorney for President Trump explains the strategy for election lawsuits.” (Facebook, Maria Bartiromo, November 16, 2020 (Exhibit 19)).
- t. November 17: Ms. Bartiromo and Mr. Giuliani appear on *Mornings with Maria* discussing Smartmatic’s role in horrendous fraud. (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).
- u. November 17: Fox News anchor Laura Ingram retweets post by Sara A. Carter captioned: “Trump’s attorneys battle for ‘legitimate votes’ as concern mounts over Dominion Voting Systems & Smartmatic.” (Twitter, @IngramAngle, November 17, 2020 (Exhibit 21)).
- v. November 17: Fox News posts video of *Mornings with Maria* to its website discussing Smartmatic’s role in horrendous fraud. (Fox News Website, November 17, 2020 (Exhibit 22))
- w. November 18: Mr. Dobbs and Mr. Giuliani appear on *Lou Dobbs Tonight* discussing Smartmatic’s role in fixing elections. (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- x. November 18: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: “Foreign Election Involvement: @RudyGiuliani says votes

in 28 states were sent to Germany and Spain to be counted by Smartmatic.” (Twitter, @LouDobbs, November 18, 2020 (Exhibit 24)).

- y. November 19: Mr. Dobbs and Ms. Powell appear on *Lou Dobbs Tonight* discussing Smartmatic’s software being used to change election results. (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- z. November 19: Fox News posts video and transcript of *Hannity* discussing broken election system. (Fox News Website, November 19, 2020 (Exhibit 26)).
- aa. November 19: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: “Inextricably Intertwined: @SidneyPowell1 has no doubt that Dominion Voting machines run Smartmatic software which allows them to manipulate the votes” #MAGA #AmericaFirst #Dobbs (Twitter, @LouDobbs, November 19, 2020) (Exhibit 27)).
- bb. November 21: Ms. Pirro appears on *Justice with Judge Jeanine* discussing corruption in “Democrat strongholds” during election. (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).
- cc. November 21: Fox News posts video and transcript of *Justice with Judge Jeanine* to its website with caption: “Questions linger over the Left’s plot against Donald Trump.” (Fox News Website, November 21, 2020 (Exhibit 29)).
- dd. November 21: Mr. Dobbs appears on *Watters’ World* discussing a cyber-attack by voting machines and software that were used to “steal” an election. (*Watters’ World*, November 21, 2020 (Exhibit 30)).

- ee. November 22: Ms. Pirro posts video of *Justice with Judge Jeanine* using Twitter with caption: “PART ONE: For four years we listen to unsupported allegations of a conspiracy by a foreign government to interfere with our presidential election” #OpeningStatement” (Twitter, @JudgeJeanine, November 22, 2020 (Exhibit 31)).
- ff. November 22: Fox News posts video of *Justice with Judge Jeanine* to its website with caption: “Judge Jeanine: Preserving U.S. election integrity.” (Fox News Website, November 22, 2020 (Exhibit 32)).
- gg. November 22: Ms. Bartiromo and Alan Dershowitz appear on *Sunday Morning Futures with Maria Bartiromo* discussing porous security of Smartmatic’s software. (*Sunday Morning Futures with Maria Bartiromo*, November 22, 2020 (Exhibit 33))
- hh. November 22: Fox News posts video and transcript of *Sunday Morning Futures with Maria Bartiromo* to its website with caption: “Dershowitz: ‘Legal theory’ supports election lawsuits but evidence is crucial.” (Fox News Website, November 22, 2020 (Exhibit 34)).
- ii. November 24: Ms. Pirro posts video of *Justice with Judge Jeanine* discussing corruption in “Democrat strongholds” during election using Facebook. (Facebook, Jeanine Pirro, November 24, 2020 (Exhibit 35))
- jj. November 26: Mr. Dobbs appears on *Lou Dobbs Tonight* discussing issues with Smartmatic’s software. (*Lou Dobbs Tonight*, November 26, 2020 (Exhibit 36)).
- kk. November 26: Fox News posts video and article titled: “Attorney Sidney Powell files lawsuit seeking Georgia election results be decertified,

awarded to Trump.” (Fox News Website, November 26, 2020 (Exhibit 37))

- ll. December 10: Mr. Dobbs and Ms. Powell appear on *Lou Dobbs Tonight* discussing Smartmatic’s role in rigging the election. (*Lou Dobbs Tonight*, December 10, 2020 (First Video) (Exhibit 38) & (Second Video) (Exhibit 39)).
- mm. December 10: Mr. Dobbs tweets: “The 2020 Election is a cyber Pearl Harbor: The leftwing establishment have aligned their forces to overthrow the United States government” #MAGA #AmericaFirst #Dobbs He includes a statement that reads, in part: “These four people [including Smartmatic’s CEO] and their collaborators executed an electoral 9-11 against the United States with the cooperation and collusion of the media and Democrat Party and China.” (Twitter, @LouDobbs, December 10, 2020 (First Tweet) (Exhibit 40)).
- nn. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: “Cyber Pearl Harbor: @SidneyPowell1 reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic and foreign adversaries.” #MAGA #AmericaFirst #Dobbs (Twitter, @LouDobbs, December 10, 2020 (Second Tweet) (Exhibit 41)).
- oo. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Twitter with caption: “Evidence of Fraud: @SidneyPowell1 says the FBI and law enforcement aren’t interested in electoral fraud witnesses and offers to make public evidence of a cyber-attack on the US election system.”

#MAGA #AmericaFirst #Dobbs (Twitter, @LouDobbs, December 10, 2020 (Third Tweet) (Exhibit 42)).

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

qq. December 10: Mr. Dobbs posts video of *Lou Dobbs Tonight* using Facebook with caption: “Evidence of Fraud: Sidney Powell says the FBI and law enforcement aren’t interested in electoral fraud witnesses and offers to make public evidence of a cyber-attack on the US election system.” #MAGA #AmericaFirst #Dobbs (Facebook, Lou Dobbs, December 10, 2020 (Second Post) (Exhibit 44)).

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

118. Fox News also ensured the broad dissemination of the disinformation campaign by posting videos and transcripts of the broadcasts on its website. Fox News has one of the largest website viewership-base of any news organization. Posting the broadcast videos and transcripts ensured Ms. Powell, Mr. Giuliani, and Fox reached an even larger *global* audience

with the disinformation about Smartmatic. Through its various platforms, and given its worldwide reach, Fox News ensured that that *billions* of people across the world heard, read, and saw the disinformation about Smartmatic.

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

120. Finally, Mr. Dobbs used hashtags to ensure an even further dissemination of the disinformation campaign. Mr. Dobbs used the hashtags #MAGA, #AmericaFirst, and #Dobbs for several of his social media postings. Mr. Dobbs did so to make sure that individuals following those hashtags would see and read his publication.

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

**E. Ms. Powell and the Relevant Non-Parties presented their statements about Smartmatic as facts, not opinions**

122. Ms. Powell, Mr. Giuliani, and Fox did not present their statements regarding Smartmatic as being opinion, rhetorical hyperbole, or speculation. They did not present their

statements regarding Smartmatic as being educated guesses, possibilities, or mere allegations. They each presented their statements regarding Smartmatic as being fact. Fact supported by “tremendous evidence.” Likewise, Fox told their viewers and readers that their coverage of Smartmatic was one of the only ways for them to receive reliable and accurate information. Fox told their viewers and readers to discredit and ignore whatever they heard from other sources.

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

- a. On its website, Fox News advertises for “FOX Around the World” (its international programming option) by saying, “[w]e know there’s no substitute for Fox News and you shouldn’t be denied our Fair and Balanced coverage just because you’re outside of the United States.”
- b. Fox News’s slogan was changed in 2016-2017 to “Most watched, Most trusted.”
- c. On its website, Fox News notes that it is “a 24-hour-all-encompassing news service delivering breaking news as well as political and business news.”
- d. The Fox News website says that it has been named “the most trusted source for television news or commentary” and Fox News boasts on its website that a 2019 “Brand Keys Emotion Engagement Analysis survey found that FOX News was the most trusted cable news brand.”
- e. In October 2020, Fox News published a press release stating that it expanded its distribution to 27 countries worldwide ahead of the U.S. presidential election, noting that it was “enabling audiences abroad unprecedented access to FOX News Channel and FOX Business Network’s world class coverage ahead of the United States election on November 3<sup>rd</sup>.”
- f. In its Twitter bio, Fox News states that it is “America’s #1 cable news network, delivering you breaking news, insightful analysis, and must-see videos.”

124. Second, Fox promotes the anchors and their programs as being reliable sources for facts. For example:

- a. Fox News and Mr. Dobbs describe Mr. Dobbs as an award-winning journalist. Fox News describes *Lou Dobbs Tonight* as the “#1 news

program on business television, which features a breakdown of the day's top stories and how they impact the economy.”

- b. Fox News and Ms. Bartiromo describe Ms. Bartiromo as a “journalist” and “news anchor” as well as the recipient of “numerous prestigious awards.” Fox News describes *Sunday Morning Futures* and *Mornings with Maria* as programs that bring “big business newsmakers to the table to explore the smartest money-making opportunities for the week ahead.”
- c. Fox News and Ms. Pirro describe Ms. Pirro as a “highly respected District Attorney, Judge, author & renowned champion of the underdog.” Fox News highlights her as having a “notable legal career” spanning “over 30 years.” Fox News describes *Justice with Judge Jeanine* as a program that provides “legal insights on the news of the week.”
- d. Fox does not describe Mr. Dobbs, Ms. Bartiromo, or Ms. Pirro as speculators or opinion mouthpieces. Fox does not describe the programs they host as pure opinion programs.

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

- a. Sidney Powell: “Yes, ***we are collecting evidence*** through a fire hose as hundreds of American patriots across the country are stepping forward with what they know about this issue.” (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).
- b. Jeanine Pirro: “If you could establish that there is corruption in the use of this software, this Dominion software as you allege and you say you have ***evidence***, how do you put that together and prove that on election night or immediately after that at the time that the votes were being either tabulated or put in, that we can prove that they were flipped?” Sidney Powell: “There are – there is ***statistical evidence***. There’s all kinds of ***mathematical evidence***, essentially ***forensic evidence***, math that cannot be disputed. We have eyewitnesses to different features of the machine. We have ***eyewitnesses*** to different aspects of the machine being uploaded with data when it was not supposed to be and never being certified.” (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).
- c. Rudy Giuliani: “In Detroit, we have ***evidence*** that a 100,000 ballots were brought in at 4:30 in the morning, and counted. And to the extent that our witnesses, and there were four of them saw it, and one of them is a ex-

employee of Dominion.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- d. Sidney Powell: “[T]he **evidence** is coming in so fast, I can’t even process it all. Millions of Americans have written, I would say by now, definitely hundreds of thousands have stepped forward with their different experiences of voter fraud.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- e. Sidney Powell: “We’ve identified mathematically the **exact algorithm** they used and plan to use from the beginning to modify the votes in this case to make sure Biden won.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- f. Sidney Powell: “I’ve just gotten some **stunning evidence from a firsthand witness**, a high ranking military officer who was present when Smartmatic was designed in a way that – and I’m going to just read you some of these statements if you don’t mind so I get them exactly right – [] from the **affidavit**. Designed in a way that the system could change the vote of each voter without being detected.” (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).
- g. Rudy Giuliani: “[W]e’re going to argue the case in Pennsylvania today . . . . And the case shows, and we’re **prepared to call witnesses** to demonstrate, that somewhere around 700,000 ballots were counted surreptitiously.” (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).
- h. Rudy Giuliani: “**I can prove what I just told you**. I can prove that there are 700,000 ballots in the state of Pennsylvania in two cities, Pittsburgh and Philadelphia, that were put in to vote and no Republican got to see it. They were deliberately excluded.” (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).
- i. Maria Bartiromo: “[D]o you feel you have enough evidence to overturn the results of this election?” Rudy Giuliani: I believe we have **amassed more than enough evidence** in Pennsylvania, Michigan, and Wisconsin, and Georgia. I believe we’re very close in Nevada. Yesterday, we won a big victory in Nevada that nobody bothers to point out. The Clark County, which is Las Vegas board, which is all Democratic, reversed an election of a Democrat in favor of Republican based on the irregularities in Clark County voting. The irregularities they’re talking about are the same, were in the same election. It’s the same irregularities except we have more of them. So they got it reversed on our evidence.” (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).
- j. Rudy Giuliani: “As we started **investigating**, both our **investigations** and the very patriotic and brave American citizens that have come forward are

extraordinary, extraordinary number of people, *extraordinary number of witnesses*. And what emerged very quickly is – this is not a singular voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern. Which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities.” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).

- k. Lou Dobbs: “President Trump’s attorneys say they can *prove illegal ballots* were used to inflate Biden’s vote tally in Georgia and Pennsylvania, in Michigan, in Wisconsin, Nevada, and Arizona.” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- l. Sidney Powell: “Well we are still in the process of *collecting evidence*. It’s coming in, in *massive amounts*. And even today we’re getting more people coming forward telling us the truth about what happened. I would think we would have fraud complaints ready sometime by late next week at the latest. But like I said, it’s just a massive amount of information now. We’ve got the – well, let me put it this way, there’s *thousands of people in federal prisons on far less evidence of criminal conduct than we have already against the Smartmatic and Dominion systems companies*.” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- m. Jeanine Pirro: “Now the President’s lawyers offered *evidence by way of affidavits*, which I told you last Saturday as a judge, from a legal perspective, are sworn statements of individuals signed under penalty of perjury. Meaning they know they face the penalty of prosecution and five years if they lie. These sworn statements are factual allegations, are part of virtually every lawsuit. It’s how you start a case. The President’s lawyers have indicated that they have 250 such *affidavits under oath*. People ready to testify, people ready to face the hate that the left has inflicted upon all of us from day one.” (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).
- n. Sidney Powell: “Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the vote even as it’s happening. We’re finding *more and more evidence* of this. We now have *reams and reams of actual documents* from Smartmatic and Dominion, including evidence that they planned and executed all of this.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).
- o. Sidney Powell: “We have *evidence of how they flip the votes*, how it was designed to flip the votes, and that all of it has been happening just as we have been saying it has been.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

- p. Lou Dobbs: “What is the evidence that you have compiled? How have you constructed the architecture of this relationship among these four individuals?” Sidney Powell: “Well, we are still **reviewing the massive amount of documents** that we have, but **we have communications** between them and all different kinds of messages that indicate their involvement in it. It’s a **massive amount of additional information** to go through that it’s only been in our hands a short time, but we will be producing more and more of it. It will be coming out more by the day.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).
- q. Sidney Powell: “Well we’ve known from early on in our **independent investigation** that the entire system was created for the benefit of Venezuela and Hugo Chávez to rig elections to make sure he continued winning.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).
- r. Sidney Powell: “The **evidence is overwhelming** and extremely troubling that this has been going on and it didn’t just start this year.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).
- s. Sidney Powell: “I mean, good American citizens who’ve been brave enough to come forward with **direct evidence** of things like thousands of ballots moving from one state to another in the middle of the night to do what is called back-filling into the machines so that they can perpetrate their fraud because President Trump won so many votes, he blew up their algorithm. The American people blew up the algorithm they created before the election to shave votes from Biden and give them to Trump. And we’re now seeing **direct evidence of that happening in multiple counties**, in multiple states and we know it happened across the country. You’d have to be damn fool and abjectly stupid not to see what happened here for anybody who is willing to look at the **real evidence**. I’ve uploaded a ton of it on our website at defendingtherepublic.org and Twitter is even trying to destroy our new website KRAKEN-wood.com, where we’re also trying to get the word out to the American people on what’s been happening here and the truth, and upload documents.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).
- t. Lou Dobbs: “Let me, let me make you an offer, very straightforwardly. We will gladly put forward your evidence that supports your claim that this was a cyber-Pearl Harbor. We have **tremendous evidence already**, of fraud in this election. But I will be glad to put forward on this broadcast whatever evidence you have, and we’ll be glad to do it immediately.” Sidney Powell: “Awesome.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).
- u. Lou Dobbs: “How much time do you need to **get that evidence to this broadcast** and we’ll put it on the air.” Sidney Powell: “I will get you some more information that’s just stunning tonight.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).

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

- a. Applicable to Ms. Powell (Texas-barred): "In the course of representing a client, a lawyer shall not knowingly (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client." (Texas Disciplinary Rule of Professional Conduct 4.01).
- b. Applicable to Mr. Giuliani (New York-barred): "In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person." (New York Rule of Professional Conduct 4.1).

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

- a. Maria Bartiromo: "All right, Rudy. We're going to be following your investigation. Thank you very much for breaking all of this news on this program this morning." Rudy Giuliani: "Thank you, thank you. Please, you may -- you may be the only one following it -- ... . Because we're, we're also enduring a lot of censorship. A lot, almost complete like we're not in America." Maria Bartiromo: "Unbelievable. Rudy Giuliani, we'll keep on it, I promise you. Thank you so much, Sir." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- b. Sidney Powell: "I can't tell you how livid I am with our government for not paying attention to complaints even brought by Democrats ... . And nobody in our government has paid any attention to it, which makes me wonder how much the CIA has used it for its own benefit in different place and why Gina Haspel is still there in the CIA is beyond my

comprehension, she should be fired immediately.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- c. Sidney Powell: “And people have been reporting this to our government for, for several years, including Democrats and nobody has done a damn thing about it, Lou. I can’t even express how furious I am over this.” (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).
- d. Sidney Powell: “Now we’ve seen willful blindness. They have adopted a position –” Lou Dobbs: “Yeah.” Sidney Powell: “– of willful blindness to this massive corruption across the country. And the Smartmatic software is in the DNA of every vote tabulating company’s software and systems.” Lou Dobbs: “Yeah, Sid it is – it is more than just a willful blindness. This is people trying to blind us to what is going on. We don’t even know who the hell really owns these companies, at least most of them ... .” (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).
- e. Jeanine Pirro: “The President’s lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money and with the assistance of Smartmatic software, a backdoor is capable of flipping votes. And the President’s lawyers alleging that American votes in a presidential election are actually counted in a foreign country. These are serious allegations, but the media has no interest in any of this, but you and I do, as we should, because 73 million Americans voted for Donald Trump.” (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).
- f. Lou Dobbs: “[I]t’s outrageous that we have an Attorney General, Sidney, who said that he sees no sign of, if any, significant fraud that would overturn the election. We had a head of the Cyber Intelligence Unit for the Department of Homeland Security who is suing some people apparently for saying that his report basically was, it was nonsense when he declared it was the most secure election in the country’s history. What are we dealing with here and how can we get to this if we have an Attorney General who has apparently lost both his nerve and his commitment to his oath of office and to the country.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 39)).

128. Ms. Powell’s, Mr. Giuliani’s, and Fox’s efforts to create the impression that their coverage of Smartmatic was truthful, accurate, and factual is one of the reasons that Ms. Powell, Mr. Giuliani, and Fox did considerable damage to Smartmatic. Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements regarding Smartmatic were unequivocal. Ms. Powell, Mr. Giuliani, and Fox told readers and viewers that it was a fact that Smartmatic had stolen the 2020 U.S. election and they had evidence to support that fact.

### III. Ms. Powell's and the Relevant Non-Parties' False Statements and Implications About Smartmatic

129. Ms. Powell's, Mr. Giuliani's, and Fox's statements about Smartmatic were not facts. Ms. Powell's, Mr. Giuliani's, and Fox's statements about Smartmatic were lies. The demonstrably, verifiable facts are:

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

130. Ms. Powell, Mr. Giuliani, and Fox did not let these demonstrable, verifiable facts stand in their way of telling a story that would make them money.

**A. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic's election technology and software were widely used in the 2020 U.S. election**

131. The first lynchpin of Ms. Powell's, Mr. Giuliani's, and Fox's disinformation campaign was to convince readers and viewers that Smartmatic's election technology and software were widely used during the 2020 U.S. election, including in the states with the closest outcomes: Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin. Ms. Powell, Mr. Giuliani, and Fox could not persuade people that Smartmatic had stolen the election if Smartmatic's election technology and software were not widely used during the 2020 U.S. election.

132. Below are some of the statements that were made by Ms. Powell, Mr. Giuliani, and Fox to create the impression that Smartmatic's election technology and software were widely used during the 2020 U.S. election:

- a. Rudy Giuliani: "They have a terrible record, and they are extremely hackable. So Texas made the right decision. [] ***What the heck was Georgia doing hiring this company?***" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- b. Sidney Powell: "Definitely hundreds of thousands have stepped forward with their different experiences of voter fraud, but ***this is a massive election fraud***. And I'm very concerned it involved, not only ***Dominion and its Smartmatic software***, but that the ***software essentially was used by other election machines also.***" (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- c. Rudy Giuliani: "They did it in big cities where they have corrupt machines that will protect them, meaning in Pennsylvania, Philadelphia, and Pittsburgh, [and] in Detroit. They didn't have to do it in Chicago, in New York or Boston. They could have, they have corrupt machines there. They did it absolutely in Phoenix, Arizona. They did it absolutely in Milwaukee, Wisconsin." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- d. Sidney Powell: "We're talking about the alteration and changes in millions of votes, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the

*Dominion and Smartmatic software*, that of course we would not expect Dominion or Smartmatic to admit.” (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

- e. Rudy Giuliani: “[Smartmatic] was banned by the United States several - about a decade ago. It’s come back now as a sub-contractor to other companies who sorta hides in the weeds. But ***Dominion sends everything to Smartmatic***. Can you believe it? [] And this company had, and this company has tried and true methods for fixing elections by calling the halt to the voting when you’re running too far behind. They’ve done that in prior elections.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- f. Maria Bartiromo: “Will you be able to prove this, Rudy? Look, I want to show this ***graphic of the swing states [] that were using Dominion and this software, this Smartmatic software***. I mean, you just said [] all this is Smartmatic, a Delaware entity registered in Boca Raton, Florida, activities in Caracas, Venezuela, the voting machines were used, Dominion voting machines were ***used in Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin***. And I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of Election Night.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- g. Rudy Giuliani: “I can prove that ***they did it in Michigan***. I can prove it with witnesses. We’re investigating the rest. In every one of those states though, we have more than enough illegal ballots already documented to overturn the results in that state. Because not only did they ***use a Venezuelan company to count our ballots***, which almost should be illegal per se. [] Now, they didn’t do it everywhere. They did it in big cities where they have corrupt machines that will protect them. Meaning in ***Pennsylvania, Philadelphia, and Pittsburgh, [and] in Detroit***. They didn’t have to do it in Chicago, in New York or Boston. They could have, they have corrupt machines there. ***They did it absolutely in Phoenix, Arizona***. They did it absolutely in ***Milwaukee, Wisconsin***. Republicans were shut out from enough of the count, so they could accomplish what ***Smartmatic wanted to do ... ..*** We have evidence that that’s the same pattern Smartmatic used in other elections in which they were disqualified.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- h. Maria Bartiromo: “Sidney, thanks very much for being here. We appreciate your time this morning. I want to get right into it. We just heard about the ***software made by Smartmatic*** from Rudy, and I want to get your take on what you – what you and I spoke about just a few minutes ago and that is a gentleman named Peter Neffenger. Tell me how he fits into all of this.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

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

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

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

135. Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements and implication that Smartmatic’s election technology and software were widely used during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic’s election technology and software were only used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or state during the 2020 U.S. election.

136. Second, Smartmatic’s election technology and software were not used in any county or state with close outcomes during the 2020 U.S. election. Smartmatic’s election

technology and software were not used in Nevada, Arizona, Georgia, Pennsylvania, Michigan, or Wisconsin. Smartmatic's election technology and software were not used in any counties in these States.

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

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

**B. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Dominion used Smartmatic's election technology and software during the 2020 U.S. election**

139. Ms. Powell, Mr. Giuliani, and Fox knew that Smartmatic was not used in any state or county outside of Los Angeles County. That fact is easily ascertainable from public records. Perhaps recognizing this flaw with their story, Ms. Powell, Mr. Giuliani, and Fox tried to hedge their bets by linking Smartmatic to Dominion. Dominion was used in multiple states during the 2020 U.S. election. Accordingly, Ms. Powell, Mr. Giuliani, and Fox decided to connect Smartmatic to Dominion by claiming that one owned the other, Dominion used Smartmatic's software, and Dominion sent votes to Smartmatic for counting.

140. Below are some of the statements that were made by Ms. Powell, Mr. Giuliani, and Fox to state and imply that Dominion used Smartmatic's election technology and software during the 2020 U.S. election:

- a. Rudy Giuliani: “***Dominion is a company that’s owned by another company called Smartmatic***, through its intermediary company named Indra.” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- b. Rudy Giuliani: “I’ll give you another connection. ***Smartmatic, the company that owns Dominion***. Well, the guy who was running it was one of the [] people who is number two or three in Soros’s Change the World organization – Open Society, right?” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- c. Rudy Giuliani: “Smartmatic is a company that was formed way back in about 2004, 2003, 2004. You’re going to be astonished when I tell you how it was formed. It was formed really by three Venezuelans who were very close to [] the dictator Chávez of Venezuela. And it was formed in order to fix elections. ***That’s the [] company that owns Dominion***. Dominion is a Canadian company, but ***all of its software is Smartmatic software***. So the votes actually go to Barcelona, Spain. So we’re using a foreign company that is owned by Venezuelans who are close to [] Chávez, are now close to Maduro, [they] have a history, they were founded as a company to fix elections.” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- d. Sidney Powell: “We’re talking about the alteration and changes in millions of votes. Some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures, all kinds of different means of manipulating the ***Dominion and Smartmatic software***, that of course we would not expect Dominion or Smartmatic to admit.” (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).
- e. Rudy Giuliani: “This Dominion company is a radical left company, one of the people there is a big supporter of Antifa and has written horrible things about the President for the last three or four years. And the ***software that they use is done by a company called Smartmatic***. It’s a company that was founded by []Chávez [] and by Chávez’s two allies, who still [] own it. It’s been used to cheat in elections in South America ... “ (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- f. Rudy Giuliani: “[Smartmatic] was banned by the United States several... about a decade ago. It’s come back now as a sub-contractor to other companies who sorta hides in the weeds ... but ***Dominion sends everything [to] Smartmatic***. Can you believe it? [] And this company ... has tried and true methods for fixing elections by calling the halt to the voting when you’re running too far behind. They’ve done that in prior elections.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- g. Maria Bartiromo: “[W]ill you be able to prove this, Rudy? Look, I want to show this **graphic of the swing states that were using Dominion and this software, the Smartmatic software**...[Y]ou just said it all. This is Smartmatic, a Delaware entity registered in Boca Raton, Florida, activities in Caracas, Venezuela. The voting machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin and I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of Election Night.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- h. Rudy Giuliani: “I can prove that they did it in Michigan. I can prove it with witnesses. We’re investigating the rest. And every one of those states though, we have more than enough illegal ballots already documented to overturn the results in that state. Because not only did **they use a Venezuelan company to count our ballots**, which almost should be illegal per se...” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- i. Maria Bartiromo: “Sidney, thanks very much for being here. We appreciate your time this morning. I want to get right into it. We just heard about the **software made by Smartmatic** from Rudy. And I want to get your take on what you [] and I spoke about just a few minutes ago and that is a gentleman named Peter Neffenger. Tell me how he fits into all of this.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- j. Maria Bartiromo: “What is the CIA’s role? Why do you think Gina Haspel should be fired immediately? You’re saying the CIA is behind the **Dominion or Smartmatic voting software** as well?” Sidney Powell: “Well, the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company’s products. Their own manual, if you sat down and read it, would explain how and why no honest person would use this system. And it’s not just Dominion. There are other companies in the voting machine business in this country too that may very well and are likely using the same software. We’ve detected voting irregularities that are inexplicable and aligned with these problems in other states that think they have valid systems. But the people who bought the Dominion system for sure knew exactly what they were getting. It should never have been installed anywhere, and we are going to show the public exactly how rotten the entire state is.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- k. Sidney Powell: “[T]his is a massive election fraud. And I’m very concerned it involved not only **Dominion and its Smartmatic software, but that the software essentially was used by other election machines also**. It’s the software that was the problem. Even their own manual

explains how votes can be wiped away. They can put, it's like drag-and-drop Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- l. Lou Dobbs: "***Dominion has connections to UK-based Smartmatic***, a voting technology company established in 2000 that had ties to Venezuela's Hugo Chávez." (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).
- m. Laura Ingraham: @IngrahamAngle "RT @SaraCarterDC #NEW Trump's attorneys battle for 'legitimate votes' as concern mounts over ***Dominion Voting Systems & Smartmatic***. Based on the affidavits given to Powell and concern over the election system's integrity there needs to be investigations" (linking article from saraacarter.com) (Twitter, @IngrahamAngle, November 17, 2020 (Exhibit 21)).
- n. Rudy Giuliani: "Lou, I don't know if people can appreciate this but I think when they do they're going to be outraged. Our votes in 27 [or] 28 states that [are] counted by Dominion, and calculated and analyzed. They're sent outside the United States. And they're not sent to Canada, they're sent to Germany and Spain. And, the company counting, ***it is not Dominion. It's Smartmatic***, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise. How to fix elections ... We shouldn't be using this company that was founded by Chávez to call votes in America because their specialty in Venezuela is cheating. Well apparently the governor signed them up and never bothered to do any due diligence of any kind." (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- o. Lou Dobbs: "Let's turn to Smartmatic and Dominion. Are they or are they not linked?" Sidney Powell: "***Oh they're definitely linked. I would call them inextricably intertwined***. They have the same history from their inception. I'm sure they're trying to distance themselves from each other, but the fact is that the Dominion machines run the Smartmatic software and or parts of the key code of it." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- p. Sidney Powell: "So [Scyt1] is related to ***the entire Smartmatic Dominion software operation***. We do not know whether the good guys got the servers or whether the bad guys got them ..." (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- q. Lou Dobbs: "#InextricablyIntertwined: @SidneyPowell1 has no doubt ***that Dominion voting machines run Smartmatic software*** which allows them to manipulate the votes." (Twitter, @LouDobbs, November 19, 2020 (Exhibit 27)).

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

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

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

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

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

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

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

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

**C. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris.**

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

149. Below are some of the statements that were made by Ms. Powell, Mr. Giuliani, and Fox to create the impression that Smartmatic had fixed, rigged, and stolen the 2020 U.S. election for Joe Biden and Kamala Harris:

- a. Sidney Powell: “[W]e’re fixing to overturn the results of the election in multiple States. And President Trump won by not just hundreds of thousands of votes, but by *millions of votes that were shifted by this software that was designed expressly for that purpose*...We have so much evidence I feel like it’s coming in through a firehose.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- b. Sidney Powell: “Well, let me put it this way. First of all, I never say anything I can’t prove. Secondly, the evidence is coming in so fast I can’t even process it all. Millions of Americans have written, I would say by now, definitely hundreds of thousands have stepped forward with their different experiences of voter fraud. But *this is a massive election fraud*. And I’m very concerned it involved, not only Dominion and *its Smartmatic software*, but that the software essentially was used by other election machines also.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- c. Rudy Giuliani: “*They did it in big cities* where they have corrupt machines that will protect them. Meaning in *Pennsylvania, Philadelphia, in Pittsburgh, [and] in Detroit*. They didn’t have to do it in Chicago, in New York or Boston. They could have, they have corrupt machines there. *They did it absolutely in Phoenix, Arizona. They did it absolutely in Milwaukee, Wisconsin.*” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- d. Rudy Giuliani: “Republicans were shut out from enough of the count so they could accomplish what Smartmatic wanted to do. . . We have evidence that that’s the *same pattern Smartmatic used in other elections* in which they were disqualified. In other words, *this is their pattern of activity*, and, yes, there is a backdoor [] and we actually have proof of some of the connections to it.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- e. Rudy Giuliani: “If you get that *Smartmatic machine* out, and you [] allow us, I mean, this is unprecedented. They are counting mail-in ballots. And they don’t allow any Republican to inspect: that is *illegal, unlawful, against the law*.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- f. Rudy Giuliani: “We have people that I can’t really disclose, that can describe the hardware in great detail. We have some of the people, former government employees: our government employees and others that were

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

- g. Sidney Powell: "Yes, well he's listed as retired...Admiral Peter Neffenger. He is President of the Board of Directors of Smartmatic, and it just so happens he's on Mr. Biden's presidential transition team that's going to be non-existent because we're fixing to overturn the results of the election in multiple States. [] President Trump won by not just hundreds of thousands of votes, but by **millions of votes that were shifted by this software that was designed expressly for that purpose**." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- h. Sidney Powell: "First of all, I never say anything I can't prove. Secondly, the evidence is coming in so fast, I can't even process it all. Millions of Americans have written, I would say by now, definitely hundreds of thousands have stepped forward with their different experiences of voter fraud. But this is a **massive election fraud**. And I'm very concerned it involved not only Dominion and its Smartmatic software but that the software essentially was used by other election machines also. It's the software that was the problem. Even their own manual explains how votes can be wiped away. **They can put, it's like drag-and-drop Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system**. In fact, every state that bought Dominion, for sure, should have a criminal investigation or at least a serious investigation of the ... officers in the States who bought the software. We've even got evidence from kickbacks, essentially." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- i. Maria Bartiromo: "What is the CIA's role? Why do you think Gina Haspel should be fired immediately? You're saying the CIA is behind the Dominion or Smartmatic voting software as well?" Sidney Powell: "Well, the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company's products. Their own manual, if you sat down and read it, would explain how and why no honest person would use this system. And it's not just Dominion. There are other companies in the voting machine business in this country too, that may very well and are likely using the same software. **We've detected voting irregularities that are inexplicable**

*and aligned with these problems in other states that think they have valid systems but the people who bought the Dominion system for sure knew exactly what they were getting.* It should never have been installed anywhere and we are going to show the public exactly how rotten the entire state is.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- j. Sidney Powell: “Okay. That’s part of it. They can stick a thumb drive in the machine or upload software to it, even from the Internet. They can do it from Germany or Venezuela, even. They can remote access anything. They can watch votes in real time. They can shift votes in real time. *We’ve identified mathematically the exact algorithm they used and plan to use from the beginning to modify the votes in this case to make sure Biden won.* That’s why he said he didn’t need your votes now, he would need you later. He was right. I mean, in his demented state he had no filter and he was speaking the truth more than once, including when he said he had the largest voter fraud organization ever. *Well, its massive election fraud. It’s going to undo the entire election. And they can do anything they want with the votes.* They can have the machines not read the signature. They can have the machines not read the down ballot. They can make the machines read and catalog only the Biden votes. *It’s like drag-and-drop whatever you want wherever you want, upload votes. [] In fact, we’ve gotten math in Michigan and Pennsylvania I think it is, that all of a sudden, hundreds of thousands of votes at a 67% ratio for Biden, 23% for Trump, [] were uploaded multiple times into the system.*” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- k. Maria Bartiromo: “Yeah, I mean, you heard what Rudy Giuliani said earlier in the program, he and Sidney Powell are investigating the Smartmatic software and the Dominion voting machines because they do believe, and *they say they have evidence, that there were back doors and the votes were manipulated* to turn Trump votes into Biden votes.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Second Video) (Exhibit 6)).
- l. Lou Dobbs: “Your reaction to what the Trump legal team and others are discovering about Dominion, Smartmatic and many of the other voting companies, which almost seems like probable cause for a complete and thorough investigation.” (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).
- m. Maria Bartiromo: “What do you think went on here? Because when we spoke on Sunday we talked about the *software made by Smartmatic that was changing [] votes from Trump to Biden.*” (*Mornings with Maria*, November 17, 2020 (Exhibit 20)).
- n. Lou Dobbs: “I am alarmed because of what is occurring in plain sight during this 2020 election for President of the United States. The

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

- o. Rudy Giuliani: “After all the Chairman of Smartmatic is very close to none other than Mr. Soros. So how do you think they’re gonna cheat? They’re gonna cheat Democratic. ***They’re going to cheat left wing, they’re going to cheat radical.*** That’s what they are: left-wing radicals.” (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- p. Rudy Giuliani: “It’s Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That’s their expertise. How to fix elections... ***Well that’s the company that was counting and calculating on election night and they did all their old tricks.***” (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- q. Lou Dobbs: “Another issue at the center of today’s news conference, the use of Dominion voting machines and Smartmatic software. Defense attorney Sidney Powell ... says Smartmatic’s technology was used to rig elections in Venezuela. ***It is now in the quote, ‘DNA of every vote tabulating company software and system.’***” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- r. Rudy Giuliani: “All they had time for is Biden, Biden, Biden, Biden, Biden, Biden, because ***they were being notified by Smartmatic in Frankfurt, that Biden was way behind and they better come up with a lot more ballots ..***” (*Hannity*, November 19, 2020 (Exhibit 26)).
- s. Jeanine Pirro: “The President’s lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money and ***with the assistance of Smartmatic software, a backdoor is capable of flipping votes.***” (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).
- t. Lou Dobbs: “The President says this time they got caught in this election and indeed they have. All across the country, various jurisdictions, stealing, trying to steal an election. And this President is demonstrating, once again, he is the wrong guy to cross. ***The wrong guy to think you can overthrow***, upend and somehow stop with a vicious campaign, whether it’s verbal, whether its physical, ***whether it is what we have seen here, a cyber-attack on our election, those voting machines and software.*** This President means to see this to the end. And that means to see it to the end of justice for these people, who have decided that they would overthrow our government and overthrow our way of life in this country. And it just damn well isn’t going to succeed. (*Watters World*, November 21, 2020 (Exhibit 30)).

- u. Lou Dobbs: “And it’s the presumption then that they had the records on those servers of all the votes that were processed by Dominion or Smartmatic?” Sidney Powell: “Yes, the way it works, ***the votes can be changed either on the ground as they come in.*** People can watch the votes streaming live...It could’ve run an automatic algorithm against all the votes, which we believe is what happened originally. And then the machines had to stop within the – or the counting had to stop in multiple places because President Trump’s lead was so great at that point, they had to stop the vote counting and come in and backfill the votes they needed to change the result.” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- v. Sidney Powell: “Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the vote even as it’s happening. We’re finding more and more evidence of this. ***We now have reams and reams of actual documents from Smartmatic and Dominion, including evidence that they planned and executed all of this.*** We know that \$400 million of money came into Smartmatic from China only a few weeks before the election and that there are George Soros connections to the entire endeavor. Lord Malloch Brown was part of it, along with the other people from Dominion, Eric Coomer... We know that one of the Smartmatic people has, went to Tarrant County, Texas and turned that county blue after having been an executive with Smartmatic and all of a sudden this one election Tarrant County is purportedly blue. ***We have evidence of how they flip the votes, how it was designed to flip the votes.*** And but all of it has been happening just as we have been saying it has been.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).
- w. Lou Dobbs: “Cyber Pearl Harbor: @SidneyPowell1 reveals groundbreaking new evidence indicating our Presidential election came under massive cyber-attack orchestrated with the help of Dominion, Smartmatic, and foreign adversaries.” (Twitter, @LouDobbs, December 10, 2020 (Exhibit 41)).

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

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

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

153. Second, Smartmatic's election technology and software were used in Los Angeles County during the 2020 U.S. election. They were not used in any other county or State during the 2020 U.S. election. Smartmatic's election technology and software could not have been used to fix, rig, or steal the election because they were not used anywhere during the election outside Los Angeles County. No one has claimed that it was a surprise that Joe Biden and Kamala Harris had more votes in Los Angeles County than the Republican candidates.

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

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

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

**D. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic sent votes to foreign countries for tabulation during the 2020 U.S. election.<sup>6</sup>**

157. Ms. Powell, Mr. Giuliani, and Fox developed an anti-foreigner theme as part of their disinformation campaign. Portraying Smartmatic as a Venezuelan company with ties to foreign dictators and funded by foreign money was one way Ms. Powell, Mr. Giuliani, and Fox developed the theme. The other way they did so was to scare people into thinking that

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<sup>6</sup> While Ms. Powell did not make any statements or implications in this category, statements and implications that Smartmatic sent votes to foreign countries for tabulation during the 2020 U.S. election were part of the disinformation campaign developed by Ms. Powell, Mr. Giuliani, and Fox. The statements in this category were part of the overall messaging disseminated to Fox's audience—that Smartmatic participated in a criminal conspiracy to fix, rig, and steal the 2020 U.S. election—and the audience would have understood and interpreted Ms. Powell's statements in light of the statements in this category.

Smartmatic sent votes to foreign countries for counting during the 2020 U.S. election. The impression that Ms. Powell, Mr. Giuliani, and Fox attempted to leave was that U.S. votes leaving U.S. soil meant they were being manipulated by foreign, anti-U.S. forces.

158. Below are some of the statements that Mr. Giuliani and Fox made to create the misimpression that Smartmatic sent votes to foreign countries for tabulation during the 2020 U.S. election:

- a. Lou Dobbs: “And now we have to find out whether they did. And *with those servers whether they’re in Canada, whether they’re in Barcelona or Spain, or Germany*. We know a number of companies. All of them are private. Five of them, five of the top voting companies in this country - at least - if they’re not in this country, they’re processing our votes in this country. They comprise 90% of all of the election voting market in this country. It’s stunning and they’re private firms and very little is known about their ownership. Beyond what you’re saying about Dominion, it’s very difficult to get a handle on just who owns what and how they’re being operated. And by the way, the states, as you well know now, *they have no ability to audit meaningfully the votes that are cast because the servers are somewhere else* and are considered proprietary and they won’t touch them. It won’t permit them being touched. So it’s really, so how do you proceed now?” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- b. Maria Bartiromo: “Will you be able to prove this, Rudy? Look, I want to show this graphic of the swing states [] that were using Dominion and this, this software, this Smartmatic software ... [Y]ou just said it, *all. This is Smartmatic*, a Delaware entity registered in Boca Raton, Florida, *activities in Caracas, Venezuela*. The voting machines were used, Dominion voting machines were used in Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin and I have a graphic showing the states where they stopped counting, which I thought was also strange to stop counting in the middle of Election Night.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- c. Rudy Giuliani: “[Smartmatic] was banned by the United States several, about a decade ago. It’s come back now as a sub-contractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it? *Our votes are sent overseas*. They are sent to someplace else, some other country. Why do they leave our country? [] And this company ... has tried and true methods for fixing elections by calling the halt to the voting when you’re running too far behind. They’ve done that in prior elections.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- d. Rudy Giuliani: “Lou, I don’t know if people can appreciate this but I think when they do they’re going to be outraged. [There are] votes in 27 [or] 28 states that [are] counted by Dominion, and calculated and analyzed. ***They’re sent outside the United States. And they’re not sent to Canada, they’re sent to Germany and Spain. And the company counting, it is not Dominion. It’s Smartmatic,*** which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections.” (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- e. Lou Dobbs: “Foreign Election Involvement: @RudyGiuliani says votes in 28 states were sent to Germany and Spain to be counted by Smartmatic.” (Twitter, @LouDobbs, November 18, 2020 (Exhibit 24)).

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

160. Individuals who heard and read Mr. Giuliani’s and Fox’s statements were led to believe that Smartmatic sent votes for foreign countries for tabulation during the 2020 U.S. election and/or Smartmatic counted U.S. votes in foreign countries during the 2020 U.S. election. Ms. Powell, Mr. Giuliani, and Fox intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

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

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

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

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

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

**E. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election.**

165. Ms. Powell, Mr. Giuliani, and Fox were not content to cast Smartmatic as a voluntary and willful participant in a fraud to steal the 2020 U.S. election. Ms. Powell, Mr.

Giuliani, and Fox also told people that Smartmatic’s election technology and software were compromised or hacked during the 2020 U.S. election. Specifically, Ms. Powell, Mr. Giuliani, and Fox told people that Smartmatic’s election technology and software has a “backdoor” and other tools that allow for easy manipulation of votes.

166. Below are some of the statements that Ms. Powell, Mr. Giuliani, and Fox made to create the misimpression that Smartmatic’s election technology and software were compromised or hacked during the 2020 U.S. election:

- a. Rudy Giuliani: “[F]irst of all, *the machines can be hacked*. There’s no question about that. Their machines can be hacked, but it’s far worse than that.” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- b. Rudy Giuliani: “They have a terrible record and they are *extremely hackable*. So, Texas made the right decision. What the heck was Georgia doing hiring this company?” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- c. Rudy Giuliani: “And yes, *they can be hacked*, and yes, they can change votes.” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- d. Lou Dobbs: “It is stunning, and they’re private firms and very little is known about their ownership. Beyond what you’re saying about Dominion, it’s very difficult to get a handle on just who owns what and how they’re being operated. And by the way, the states, as you well know now, *they have no ability to audit meaningfully the votes* that are cast because the servers are somewhere else and are considered proprietary and they won’t touch them. It won’t permit them being touched so it’s really, so how do you proceed now?” (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- e. Maria Bartiromo: “Now, I have spoken with a few whistleblowers myself, this weekend. And one source who is an IT specialist, told me that he knows the software and specifically advised people in Texas, officials in Texas, not to use it. And yet, he was overruled. He said that *there was an unusual patch that was put into the software while it was live, and it’s highly unusual to put a patch in there*.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- f. Maria Bartiromo: “One source says that the key point to understand is that the *Smartmatic system has a back door*, that allows it to be [], or that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of how many votes will be needed to gain

an electoral advantage.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- g. Rudy Giuliani: “Republicans were shut out from enough of the count, so they could accomplish what Smartmatic wanted to do...[W]e have evidence that that’s the same pattern Smartmatic used in other elections in which they were disqualified. In other words, this is their pattern of activity, and, yes, ***there is a backdoor [] and we actually have proof of some of the connections to it.***” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- h. Maria Bartiromo: “What is the CIA’s role? Why do you think Gina Haspel should be fired immediately? You’re saying the CIA is behind the Dominion or Smartmatic voting software as well?” Sidney Powell: “Well, ***the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company’s product.***” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- i. Lou Dobbs: “Smartmatic, once the subject of a Treasury Department investigation into its connections with the Venezuelan government. Three of their employees were also charged in 2016 with illegally altering code on an election server in the Philippines’ national election...And in a 2015 interview on Filipino television, Malloch-Brown said part of their technology is licensed from Dominion Voting Systems. Smartmatic now says that isn’t true ... A Politico article from March, in fact, documents that ***numerous security flaws were discovered in Smartmatic’s software*** by California’s Secretary of State and outside computer experts.” (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 14)).
- j. Sidney Powell: “And every time there was a glitch, as they called it, or connection to the Internet, they also violated state laws that required the machines to be certified and nothing to be changed before the votes. There are any number of legal grounds on which the use of those machines has to be stopped and the votes invalidated.” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- k. Jeanine Pirro: “The President’s lawyers alleging a company called Dominion, which they say started in Venezuela with Cuban money and with the assistance of Smartmatic software, ***a backdoor is capable of flipping votes.***” (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).
- l. Maria Bartiromo: “This is, has to do with Smartmatic election software. They say number one, observers prevented them from seeing the ballots. Number two, there’s an inconsistent laws of curing balance [sic]. Number three, the in-person voters told that they voted already, and officials told not to look for defects, and to backdate ballots before ... November third.

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

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

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

168. Individuals who heard and read Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements were led to believe that Smartmatic’s election technology and software were compromised or hacked during the 2020 U.S. election. Ms. Powell, Mr. Giuliani, and Fox intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

169. Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements and implication that Smartmatic’s election technology and software were compromised or hacked during the 2020 U.S. election are demonstrably false and factually inaccurate. First, Smartmatic’s election

technology and software were not compromised or hacked during the 2020 U.S. election. There is no evidence of cyber-security problems in connection with the election in Los Angeles County, the only county where Smartmatic's election technology and software were used during the 2020 U.S. election.

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

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

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

**F. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic was previously banned from providing election technology and software in the United States.<sup>7</sup>**

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

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

- a. Rudy Giuliani: “Republicans were shut out from enough of the count so they could accomplish [what] Smartmatic wanted to do. . . . [*W*]e have *evidence that that’s the same pattern Smartmatic used in other elections in which they were disqualified*. In other words, this is their pattern of activity, and, yes, there is a backdoor [] and we actually have proof of some of the connections to it.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- b. Rudy Giuliani: “[*Smartmatic*] was *banned by the United States several times ... about a decade ago*. It’s come back now as a sub-contractor to other companies who sorta hides in the weeds. But Dominion sends everything to Smartmatic. Can you believe it?” (*Sunday Morning Futures with Maria Bartiromo, Fox News*, November 15, 2020 (Exhibit 5)).
- c. Maria Bartiromo: “What is the CIA’s role? Why do you think Gina Haspel should be fired immediately? You’re saying the CIA is behind the Dominion or Smartmatic voting software as well?” Sidney Powell: “Well,

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<sup>7</sup> While Ms. Powell did not make any statements or implications in this category, statements and implications that Smartmatic was previously banned from providing election technology and software in the United States were part of the disinformation campaign developed by Ms. Powell, Mr. Giuliani, and Fox. The statements in this category were part of the overall messaging disseminated to Fox’s audience—that Smartmatic participated in a criminal conspiracy to fix, rig, and steal the 2020 U.S. election—and the audience would have understood and interpreted Ms. Powell’s statements in light of the statements in this category.

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

- d. Rudy Giuliani: "[T]he company counting, it is not Dominion. It's Smartmatic, which is a company that was founded in 2005 in Venezuela for the specific purpose of fixing elections. That's their expertise, how to fix elections. They did it a number of times in Venezuela. They did it in Argentina. They messed up an election ... in Chicago and there's a whole congressional record that you can go look at about what a terrible company this is ... [I]t's all the more outrageous because Dominion and *Smartmatic were denied use in the state of Texas, which called them out for what they are.*" (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- e. Lou Dobbs: "Among the many things that the agency failed to disclose, is that Dominion Voting Systems and another, well, several, voting companies are members of their election infrastructure sector coordinating council. And that's a mouthful. It's an advisory council to CISA and the DHS. One of two entities that authored, that wrote, the CISA November 12th statement. Also sitting on that council, in addition to Dominion, is *Smartmatic, another company that we have reported on, and detailed, on this broadcast with documented issues with their voting machine software.*" (*Lou Dobbs Tonight*, November 26, 2020 (Exhibit 38)).

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

176. Individuals who heard and read Mr. Giuliani's and Fox's statements were led to believe that Smartmatic had previously been banned from providing election technology and software in the United States. Ms. Powell, Mr. Giuliani, and Fox intended for individuals who

heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

177. Mr. Giuliani's and Fox's statements and implication that Smartmatic had previously been banned from providing election technology and software in the United States are demonstrably false and factually inaccurate. First, Smartmatic has never been banned from providing election technology and software in the United States. Smartmatic has never been banned by any country from providing election technology and software. Other voting companies may have been banned or had their technology banned from being used in the United States, but not Smartmatic.

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

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

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

**G. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic is a Venezuelan company founded and funded by corrupt dictators from socialist and communist countries.**

181. Ms. Powell, Mr. Giuliani, and Fox introduced xenophobia into their disinformation campaign. Ms. Powell's, Mr. Giuliani's, and Fox's story included describing Smartmatic as a Venezuelan company – a socialist and one-time communist-controlled country. It included stating that Smartmatic was founded by and for Hugo Chávez – the former socialist head of Venezuela. And it included stating that Smartmatic received funding from socialist and communist countries like China and Cuba. Ms. Powell, Mr. Giuliani, and Fox intended to portray Smartmatic as being linked to socialism and communism to make its role in the 2020 U.S. election appear more nefarious.

182. Below are some of the statements that Ms. Powell, Mr. Giuliani, and Fox made to create the impression that Smartmatic was a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries:

- a. Rudy Giuliani: "Smartmatic is a company that was formed way back in about 2004, 2003, 2004. You're gonna be astonished when I tell you how it was formed. ***It was formed really by three Venezuelans, who were very close to ... the dictator, Chávez, of Venezuela.*** And it was formed in order to fix elections. That's the, that's the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic software. So the votes actually go to Barcelona, Spain. So we're using a foreign company that is ***owned by Venezuelans who are close to ... Chávez, are now close to Maduro,*** have a history, they were founded as a company to fix elections." (*Lou Dobbs Tonight*, November 12, 2020 (Exhibit 1)).
- b. Sidney Powell: "Lord Malloch-Brown's name has been taken off the website for the company that he runs through the U.K. and Canada - that has a role in this. It's either Symantec or Smartmatic or the two, there - one is a subsidiary of the other. It's all inexplicably intertwined. ***The money creating it came out of Venezuela and Cuba. It was created for the express purpose of being able to alter votes and secure the reelection of Hugo Chávez. And then Maduro.***" (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).

- c. Maria Bartiromo: “Coming up: President Trump’s legal team with new evidence this morning of backdoors on voting machines, ballot tampering and election interference. . . **Plus, Sidney Powell on the Venezuela connection.** . . (Sunday Mornings Futures with Maria Bartiromo, November 15, 2020 (Exhibit 5)).
- d. Rudy Giuliani: “This Dominion company is a radical left company. One of the people there is a big supporter of Antifa and has written horrible things about the President for the last three or four years. And the **software that they use is done by a company called Smartmatic. It’s a company that was founded by Chávez. And by Chávez’s two - two allies who still own ... it.** And it’s been used to cheat in elections in South America.” (Sunday Morning Futures with Maria Bartiromo, November 15, 2020 (Exhibit 5)).
- e. Rudy Giuliani: “I can prove that they did it in Michigan. I can prove it with witnesses. We’re investigating the rest. And every one of those states though, we have more than enough illegal ballots already documented to overturn the results in that state. Because not only did **they use a Venezuelan company** to count our ballots, **which almost should be illegal per se ...**” (Sunday Morning Futures with Maria Bartiromo, November 15, 2020 (Exhibit 5)).
- f. Rudy Giuliani: “And this has to be examined, Maria, beyond this election, which I believe will get overturned. But beyond this election, this whole thing has to be investigated as a national security matter. And the governors who gave contracts to this company never bothered to do any due diligence. I mean, **I can’t imagine you’d give a contract to a company if you went one step further and found out it’s really being run by people that are close to Maduro and Chávez.** I can’t imagine you would do that unless you were out of your mind.” (Sunday Morning Futures with Maria Bartiromo, November 15, 2020 (Exhibit 5)).
- g. Rudy Giuliani: “A company that’s not American, a company that is foreign, **a company that has close, close ties with Venezuela** and therefore China. And **uses Venezuelan’s – a company’s** software that’s been used to steal elections in other countries.” (Sunday Morning Futures with Maria Bartiromo, November 15, 2020 (Exhibit 5)).
- h. Sidney Powell: “I mean that’s just logic. It’s been, this affidavit also explains, had been used to change election results all over the world. And **it’s all Venezuelan and Cuban and essentially communist money that’s been doing this. It’s a foreign-owned company** as you mentioned earlier.” (Lou Dobbs Tonight, November 16, 2020 (Exhibit 15)).
- i. Lou Dobbs: “Dominion has connections to UK-based **Smartmatic**, a voting technology company established in 2000 that **had ties to Venezuela’s Hugo Chávez.**” (Lou Dobbs Tonight, November 16, 2020 (Exhibit 14)).

- j. Sidney Powell: “Smartmatic agreed to create such a [voting] system and produce the software and hardware that accomplished the result for President Chávez. After the Smartmatic [] electoral management system was put in place, he closely observed several elections where the results were manipulated using the Smartmatic software. One such election was December 2006, when Chávez was running against Rosales. Chávez won in a landslide over Rosales ... . In 2013, he witnessed another Venezuelan national election where *the Smartmatic management system was used to manipulate and change the results for Chávez.*” (*Lou Dobbs Tonight*, November 16, 2020 (Exhibit 15)).
- k. Rudy Giuliani: “We shouldn’t be using this *company that was founded by Chávez* to call votes in America because their specialty in Venezuela is cheating. Well, apparently the governor signed them up and never bothered to do any due diligence of any kind.” (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- l. Rudy Giuliani: “They’ve since taken it down. But we have it. So we’ve got a very radical far-left company with [] some of their high-level people supportive of Antifa. Can you believe that? And they’re *using a Venezuelan company as the vote counter*, which is known for changing votes and also known to have [] the most insecure computers in this business. I think you’d only pick them [] because they [want to] cheat.” (*Lou Dobbs Tonight*, November 18, 2020 (Exhibit 23)).
- m. Jeanine Pirro: “The President’s lawyers alleging a company called Dominion, which they say *started in Venezuela with Cuban money and with the assistance of Smartmatic software*, a backdoor is capable of flipping votes.” (*Justice with Judge Jeanine*, November 21, 2020 (Exhibit 28)).
- n. Maria Bartiromo: “Also in terms of the computers and *the software, Smartmatic election software was developed, Sidney Powell says, in Venezuela, with porous security* and built-in functionality allowing the administrators to override security features.” (*Sunday Morning Futures with Maria Bartiromo*, November 22, 2020 (Exhibit 33)).
- o. Sidney Powell: “Well we’ve known from early on in our independent investigation that *the entire system was created for the benefit of Venezuela and Hugo Chávez* to rig elections to make sure he continued winning. And then it was passed onto Mr. Maduro to do the same. And we know it was exported to other countries by virtue of some of the Dominion executives that proceeded to go about and essentially sell elections to the highest bidder.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).
- p. Sidney Powell: “We are still reviewing the massive amount of documents that we have .... It’s a massive amount of additional information to go through .... And then also the connections to the Chinese and other

countries that were attacking us in this massive cyber Pearl Harbor, as we called it.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

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

184. Individuals who heard and read Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements were led to believe that Smartmatic was a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries. Ms. Powell, Mr. Giuliani, and Fox intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

185. Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements and implication that Smartmatic is a Venezuelan company that was founded and funded by corrupt dictators from socialist and communist countries are demonstrably false and factually inaccurate. First, Smartmatic USA Corp. is an American company. Smartmatic USA Corp. was founded in Florida and incorporated in Delaware in 2000.

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

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

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

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

**H. Ms. Powell and the Relevant Non-Parties falsely stated and implied that Smartmatic's election technology and software were designed to fix, rig, and steal elections.**

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

191. Below are some of the statements that Ms. Powell, Mr. Giuliani, and Fox made to create the impression that Smartmatic's election technology and software were designed to fix, rig, and steal elections:

- a. Rudy Giuliani: "Smartmatic is a company that was formed way back in about 2004, 2003, 2004. You're gonna be astonished when I tell you how it was formed. It was formed really by three Venezuelans who were very

close to ... the dictator, Chávez, of Venezuela. ***And it was formed in order to fix elections.*** That's the, that's the company that owns Dominion. Dominion is a Canadian company, but all of its software is Smartmatic software. So the votes actually go to Barcelona, Spain. So we're using a foreign company that is owned by Venezuelans who are close to [] Chávez, are now close to Maduro, [they] have a history, ***they were founded as a company to fix elections.***" (*Lou Dobbs Tonight*, November 12, 2020 (Exhibits 1)).

- b. Sidney Powell: "[W]e're fixing to overturn the results of the election in multiple states. And President Trump won by not just hundreds of thousands of votes, but by millions of ***votes that were shifted by this software that was designed expressly for that purpose*** ... We have so much evidence I feel like it's coming in through a firehose." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- c. Rudy Giuliani: "Republicans were shut out from enough of the count so they could accomplish [what] Smartmatic wanted to do ... ***we have evidence that that's the same pattern Smartmatic used in other elections in which they were disqualified.*** In other words, this is their pattern of activity, and yes, there is a backdoor [] and we actually have proof of some of the connections to it." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- d. Sidney Powell: "We're talking about the ***alteration and changes in millions of votes***, some being dumped that were for President Trump, some being flipped that were for President Trump. Computers being overwritten to ignore signatures. All kinds of different means of manipulating the Dominion and ***Smartmatic software***, that of course, we would not expect Dominion or ***Smartmatic*** to admit." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).
- e. Sidney Powell: "The money creating it came out of Venezuela and Cuba. ***It was created for the express purpose of being able to alter votes and secure the re-election of Hugo Chávez and then Maduro.*** They've used it in Argentina. There was an American citizen who has exported it to other countries. And it is one huge, ***huge criminal conspiracy*** that should be investigated by military intelligence for its national security implications." (*Justice with Judge Jeanine*, November 14, 2020 (Exhibit 3)).
- f. Maria Bartiromo: "Coming up: President Trump's legal team with new evidence this morning of backdoors on voting machines, ballot tampering and election interference." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- g. Rudy Giuliani: "[Smartmatic] was banned by the United States [] about a decade ago. It's come back now as a subcontractor to other companies who sorta hides in the weeds. But Dominion sends everything to

Smartmatic. Can you believe it? Our votes are sent overseas. They are sent to someplace else, some other country. Why do they leave our country? [] And *this company ... has tried and true methods for fixing elections by calling the halt to the voting when you're running too far behind. They've done that in prior elections.*" (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- h. Maria Bartiromo: "One source says that the key point to understand is that the *Smartmatic system has a backdoor* that allows it to be [], or that allows the votes to be mirrored and monitored, allowing an intervening party a real-time understanding of *how many votes will be needed to gain an electoral advantage.*" (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- i. Rudy Giuliani: "Republicans were shut out from enough of the count, so they could accomplish *what Smartmatic wanted* to do ... [W]e have evidence that that's *the same pattern Smartmatic used in other elections in which they were disqualified.* In other words, *this is their pattern of activity*, and, *yes, there is a backdoor []* and we actually have proof of some of the connections to it." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- j. Sidney Powell: "Yes. Well he's listed as ... retired Admiral Peter Neffenger. He is President of the board of directors of Smartmatic, and it just so happens, he's on Mr. Biden's presidential transition team that's gonna be non-existent because we're fixing to overturn the results of the election in multiple states. [] President Trump won by not just hundreds of thousands of votes but by millions of votes that were *shifted by this software that was designed expressly for that purpose.*" (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- k. Sidney Powell: "We have sworn witness testimony of why the software was designed. *It was designed to rig elections.* He was fully briefed on it. He saw it happen in other countries. It was exported internationally for profit by the *people that are behind Smartmatic* and Dominion. *They did this on purpose*, it was calculated, they've done it before. We have evidence from 2016 in California. We have so much evidence, I feel like it's coming in through a firehose." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- l. Sidney Powell: "[T]his is a massive election fraud, and I'm very concerned it involved not only Dominion and its *Smartmatic software*, but that the software essentially was used by other election machines also. *It's the software that was the problem. Even their own manual explains how votes can be wiped away.* They can put, it's like drag-and-drop Trump votes to a separate folder and then delete that folder. It's absolutely brazen how people bought this system and why they bought this system." (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).

- m. Maria Bartiromo: “What is the CIA’s role? Why do you think Gina Haspel should be fired immediately? You’re saying the CIA is behind the Dominion or **Smartmatic voting software** as well?” Sidney Powell: “Well, the CIA and the FBI and other government organizations have received multiple reports of wrongdoing and failures and vulnerabilities in this company’s products. **Their own manual, if you sat down and read it, would explain how and why no honest person would use this system.** And it’s not just Dominion. There are other companies in the voting machine business in this country too, that may very well and are likely using the same software. We’ve detected voting irregularities that are inexplicable and aligned with these problems in other states that think they have valid systems. But the people who bought the Dominion system for sure knew exactly what they were getting. It should never have been installed anywhere and we are going to show the public exactly how rotten the entire state is.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- n. Sidney Powell: “Okay. That’s part of it. They can stick a thumb drive in the machine or upload software to it, even from the Internet. They can do it from Germany or Venezuela, even. They can remote access anything. They can watch votes in real time. **They can shift votes in real time. We’ve identified mathematically the exact algorithm they used and planned to use from the beginning to modify the votes in this case to make sure Biden won** ... Well, its massive election fraud. It’s going to undo the entire election. And **they can do anything they want with the votes.** They can have the machines not read the signature. They can have the machines not read the down ballot. They can make the machines read and catalog only the Biden votes. It’s like drag-and-drop whatever you want, wherever you want, upload votes ... In fact, we’ve got math in Michigan and Pennsylvania, I think it is, that all of a sudden, hundreds of thousands of votes at a 67% ratio for Biden, 23% for Trump [], were uploaded multiple times into the system.” (*Sunday Morning Futures with Maria Bartiromo*, November 15, 2020 (Exhibit 5)).
- o. Sidney Powell: “I’ve just gotten some stunning evidence from a firsthand witness, a high-ranking military officer who was present when **Smartmatic was designed in a way that** - and I’m going to just read you some of these statements if you don’t mind, so I get them exactly right from the affidavit. **‘Designed in a way that the system could change the vote of each voter without being detected.** . . Smartmatic agreed to create such a system and produced the software and hardware that accomplished the result for President Chávez. After the Smartmatic [] electoral management system was put in place, he closely observed several elections where the **results were manipulated** using the Smartmatic software ... Persons controlling the vote tabulation computer had the **ability to change the reporting of votes by moving votes from one**

*candidate to another by using the Smartmatic software.” (Lou Dobbs Tonight, November 16, 2020 (Exhibit 15)).*

- p. Sidney Powell: “Smartmatic *agreed to create such a [voting] system and produce the software and hardware that accomplished the result for President Chávez.* After the Smartmatic [] electoral management system was put in place, he closely observed several elections where the results were manipulated using the Smartmatic software. One such election was December 2006, when *Chávez* was running against Rosales. *Chávez* won in a landslide over Rosales ... In 2013, he witnessed another Venezuelan national election where *the Smartmatic management system was used to manipulate and change the results for Chávez.*” (Lou Dobbs Tonight, November 16, 2020 (Exhibit 15)).
- q. Sidney Powell: “So here’s the other kicker, ‘when the *Smartmatic machines* .... when somebody’s losing, like for example when Maduro and his supporters realized the size of the other guy’s lead, they were worried that they were in crisis mode and would lose the election. The Smartmatic’s [sic] machines used for voting in each state were connected to the Internet, reported their information over the Internet to the Caracas control center real-time because, the *decision was made to reset the entire system.* Maduro and his supporters ordered the network controllers to take the Internet itself offline in practically all parts in Venezuela to change the result. It took the voting operators approximately two hours to make the adjustments in the vote from Radonski to Maduro. Then when they turned the Internet back on and the online reporting was up and running again, they checked each screen, state-by-state, to be certain they could see each *vote was changed in favor of Maduro.*” (Lou Dobbs Tonight, November 16, 2020 (Exhibit 15)).
- r. Lou Dobbs: “Dominion has connections to UK based Smartmatic, a voting technology company established in 2000 that had ties to Venezuela’s Hugo Chávez.” (Lou Dobbs Tonight, November 16, 2020 (Exhibit 14)).
- s. Lou Dobbs: @LouDobbs “Electoral Fraud: @SidneyPowell1 says she has firsthand evidence that Smartmatic voting software was designed in a way to change the vote of a voter without being detected.” (Twitter, @LouDobbs, November 16, 2020 (Exhibit 18)).
- t. Rudy Giuliani: “Lou, I don’t know if people can appreciate this but I think when they do, they’re gonna be outraged. Our votes in 27 [or] 28 states that [are] counted by Dominion, and calculated and analyzed. They’re sent outside the United States. And they’re not sent to Canada, they’re sent to Germany and Spain. And, the company counting, *it is not Dominion. It’s Smartmatic,* which is a company that was *founded in 2005 in Venezuela for the specific purpose of fixing elections. That’s their expertise. How to fix elections...*We shouldn’t be using this company that was founded by Chávez to call votes in America *because*

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

- u. Sidney Powell: “The software itself was created with so many variables and so many backdoors that can be hooked up to the Internet or a thumb drive stuck in it or whatever. But *one of its most characteristic features is its ability to flip votes.* It can set and run an algorithm that probably ran all over the country to take a certain percentage of votes from President Trump and flip them to President Biden, which we might have never uncovered...” (*Lou Dobbs Tonight*, November 19, 2020 (Exhibit 25)).
- v. Sidney Powell: “Well, Lou, they designed and developed the Smartmatic and Dominion programs and machines that include a controller module that allows people to log in and manipulate the vote even as it’s happening.” (*Lou Dobbs Tonight*, December 10, 2020 (Exhibit 38)).

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

193. Individuals who heard and read Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements were led to believe that Smartmatic’s election technology and software were designed to fix, rig, and steal elections. Ms. Powell, Mr. Giuliani, and Fox intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

194. Ms. Powell’s, Mr. Giuliani’s, and Fox’s statements and implication that Smartmatic’s election technology and software were designed to fix, rig, and steal elections are demonstrably false and factually inaccurate. First, Smartmatic’s election technology and

software were not designed to fix, rig, or steal elections. Smartmatic's election technology and software were designed to ensure secure, reliable, and auditable elections.

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

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

197. Fourth, Smartmatic's election technology and software have not been used to delete or eliminate votes for a particular candidate. Nor do any manuals used with Smartmatic's election technology and software include instructions on how votes for a particular candidate can be deleted or eliminated by clicking and dragging, by creating folders, or otherwise. Smartmatic's election technology and software creates audit trails. Audit trails are inconsistent with the notion of deleting and eliminating votes.

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

199. Sixth, Hugo Chávez had no role in the development or design of Smartmatic's election technology and software. Nor was Smartmatic's election technology and software

developed in coordination with Mr. Chávez. Smartmatic's election technology and software were developed to ensure secure, reliable, and auditable elections.

**IV. Ms. Powell and the Relevant Non-Parties Acted with Actual Malice and Ill Will Towards Smartmatic<sup>8</sup>**

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

201. Ms. Powell's actual malice with respect to her statements and implications about Smartmatic is illustrated by the following facts:

- Ms. Powell had no basis for her statements about Smartmatic's role in the 2020 U.S. election. They simply made up a story.
- Ms. Powell had obvious reasons to doubt what she was saying about Smartmatic outside of the 2020 U.S. election because most of it was made up too.
- Ms. Powell had obvious reasons to doubt the veracity of her so-called "sources" because she knew the story about Smartmatic was made up. Even the "sources" Ms. Powell tried to use to support her story lacked firsthand knowledge of Smartmatic.
- Ms. Powell possessed or had access to a significant volume of information that contradicted the story she told about Smartmatic. Ms. Powell either reviewed this information (and therefore knew her statements and implications were false) or purposefully avoided reviewing this information because she did not want to know the truth.

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<sup>8</sup> Smartmatic's discussion of Ms. Powell's actual malice is not an admission that Smartmatic must allege and prove Ms. Powell acted with actual malice to establish liability or recover damages.

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

**A. Ms. Powell and the Relevant Non-Parties had no support for their statements and implications regarding Smartmatic.**

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

**1. Ms. Powell and the Relevant Non-Parties did not have sources to prove something that did not happen.**

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

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

206. Ms. Powell, Mr. Giuliani, and Fox stated and implied that Dominion used Smartmatic's election technology and software during the 2020 U.S. election. Ms. Powell, Mr. Giuliani, and Fox did not have any source for this statement and implication because Dominion did not use Smartmatic's election technology and software during the 2020 U.S. election.

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

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

209. Ms. Powell, Mr. Giuliani, and Fox stated and implied that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election. Ms. Powell, Mr. Giuliani, and Fox did not have any source for this statement and implication because no one has raised cyber-security concerns with the election in Los Angeles County.

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

211. Mr. Giuliani and Fox stated and implied that Smartmatic's election technology and software had been banned from use in the United States. Mr. Giuliani and Fox did not have

any source for this statement and implication because Smartmatic's election technology and software have never been banned in the United States.

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

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

**2. Ms. Powell and the Relevant Non-Parties purposefully avoided learning the truth about Smartmatic and its election technology and software.**

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

215. Ms. Powell, Mr. Giuliani, and Fox also intentionally avoided obtaining information from Smartmatic. Neither Ms. Powell nor Mr. Giuliani ever contacted Smartmatic to verify any statements they made. Fox only reached out to Smartmatic on November 16, 2020,

well into the disinformation campaign and after 24 false statements had been made. Fox made no attempt to contact Smartmatic to obtain information prior to November 16, 2020. By that time, Fox News had aired three TV broadcasts, published four news reports online, and posted five times on social media about Smartmatic.

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

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

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

**B. Ms. Powell and the Relevant Non-Parties had access to information showing their statements and implications about Smartmatic and its technology and software were factually inaccurate.**

219. Ms. Powell, Mr. Giuliani, and Fox knew their statements and implications regarding Smartmatic and its technology and software were false, or they acted with reckless disregard for the truth when making their statements. Ms. Powell, Mr. Giuliani, and Fox possessed and/or had access to information that showed their statements were false. Ms. Powell, Mr. Giuliani, and Fox also made statements for which they had no factual basis.

**1. Ms. Powell and the Relevant Non-Parties knew Smartmatic's election technology and software were not widely used in the 2020 U.S. election (and were not used in contested states).**

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

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

222. Each state publicly disclosed the election technology used in the 2020 U.S. election. This information showed that Smartmatic did not provide or manufacture any technology or software in any contested states discussed by Ms. Powell, Mr. Giuliani, and Fox .

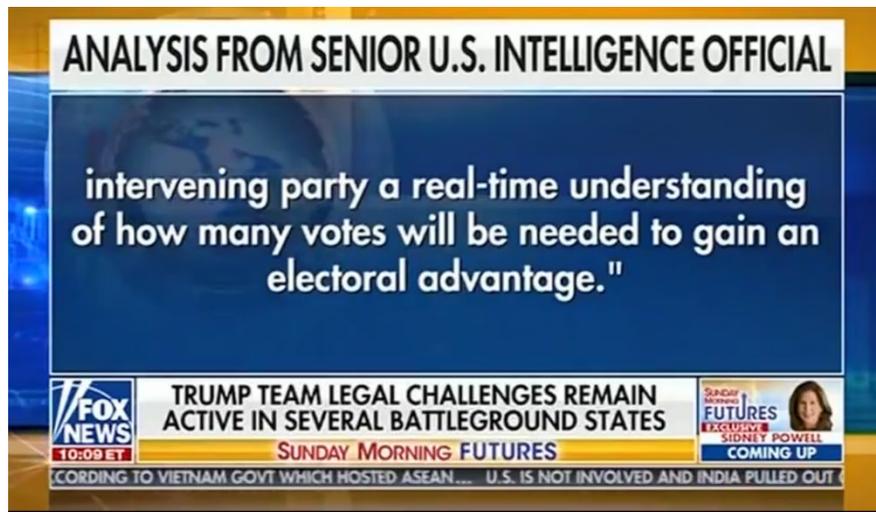
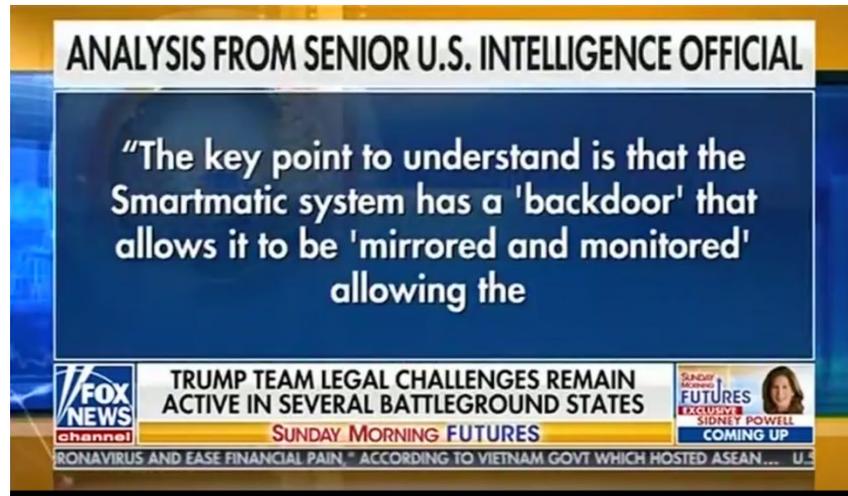
223. For example, on November 12, Mr. Dobbs gave an update on Dominion and Smartmatic on *Lou Dobbs Tonight*, asking Mr. Giuliani how important the concerns were being expressed by a number of states about the ability of their machines to be hacked. Mr. Giuliani

told Mr. Dobbs that the machines can be hacked and specifically named Smartmatic and its software. In discussing this hacking, Mr. Giuliani stated: “What the heck was Georgia doing in hiring this company?” However, there was publicly available information from the state of Georgia at the time that showed that Dominion and Smartmatic were two separate companies and that Smartmatic’s election technology was not used by Georgia in the 2020 U.S. election. This was similarly true for other states.

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

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





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

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

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

228. Michigan: On January 24, 2017, Michigan's State Administrative Board approved only three vendors of voting systems: Dominion, ES&S, and Hart InterCivic. (Michigan Secretary of State Jocelyn Benson, *Voting System Purchase* (Exhibit 61<sup>9</sup>)). In early November, the State of Michigan publicly identified the use of the Dominion election management system and voting machines. There was no mention of Smartmatic. (11/6/20 Michigan Department of State Press Release (Exhibit 62)). The Secretary of State for Michigan also had a voting systems map on its website that identified the vendor/manufacture for different locations. The map identified three companies: (1) Dominion, (2) Hart InterCivic, and (3) ES&S. Smartmatic was not identified. Michigan Voter Information Center, *Voting Systems Map* (Exhibit 60)).

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

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<sup>9</sup> Available at [https://www.michigan.gov/sos/0,4670,7-127-1633\\_11976\\_78903---,00.html](https://www.michigan.gov/sos/0,4670,7-127-1633_11976_78903---,00.html).

*Have New Voting Systems In Place By End Of 2019* (Exhibit 65<sup>10</sup>). The Pennsylvania Department of State subsequently certified the following providers of electronic voting systems: (1) Unisyn, (2) ES&S, (3) Dominion, (4) ClearBallot, and (5) Hart Verity Voting. (Pennsylvania Department of State, *Electronic Voting Systems Certified After January 1, 2018* (Exhibit 64<sup>11</sup>)). Counties then had the option to choose only from seven electronic voting systems offered by those five providers. Smartmatic was not one of them. (*Votes PA: New Voting Systems* (Exhibit 66<sup>12</sup>)).

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

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

232. Nevada: As of November 2020, all jurisdictions in Nevada used voting systems from either Dominion or ES&S. Smartmatic was not used. (Nevada Secretary of State: *Voting System* (Exhibit 74<sup>13</sup>)).

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<sup>10</sup> Available at <https://www.media.pa.gov/Pages/State-Details.aspx?newsid=276>.

<sup>11</sup> Available at <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/Voting-Systems.aspx>,

<sup>12</sup> Available at <https://www.votespa.com/About-Elections/Pages/New-Voting-Systems.aspx>,

<sup>13</sup> Available at <https://www.nvsos.gov/sos/elections/election-resources/voting-system>

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

- a. On October 29, 2018, it was reported that a trio of companies—ES&S, Dominion, and Hart InterCivic—sell and service more than 90 percent of the machinery on which votes in the country are cast and results tabulated. (10/29/18 AP Article, *US election integrity depends on security-challenged firms* (Exhibit 110<sup>14</sup>); 10/29/18 AP Article, *Security-challenged firms are gatekeepers of US elections* (Exhibit 111<sup>15</sup>)).
- b. On March 27, 2019, Senator Amy Klobuchar and others sent a letter to the country's three largest election system vendors with questions on their security in anticipation of the 2020 U.S. election. Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (3/27/19 Klobuchar Press Release, *Ranking Members Klobuchar, Warner, Reed, and Peters Press Election Equipment Manufacturers on Security* (Exhibit 112)).
- c. On December 6, 2019, Senators Elizabeth Warren, Amy Klobuchar, and others sent letters to the private equity firms that owned or had investments in the vendors responsible for the “vast majority of voting

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<sup>14</sup> Available at <https://www.foxbusiness.com/features/us-election-integrity-depends-on-security-challenged-firms>.

<sup>15</sup> Available at <https://www.foxbusiness.com/markets/security/security-challenged-firms-are-gatekeepers-of-us-elections>.

machines and software in the United States” with questions in anticipation of the 2020 U.S. election, noting that these vendors collectively distribute voting machines and software for “over 90% of all eligible voters in the United States.” Those vendors were (1) ES&S, (2) Dominion, and (3) Hart InterCivic—not Smartmatic. (12/10/19 Warren Press Release, *Warren, Klobuchar, Wyden, and Pocan Investigate Vulnerabilities and Shortcomings of Election Technology Industry with Ties to Private Equity* (Exhibit 116)). Defendant Powell, in fact, attached these letters to a complaint she filed in Georgia on November 26, 2020, an amended complaint she filed in Michigan on November 29 2020, a complaint she filed in Wisconsin on December 1, 2020, a complaint she filed in Arizona on December 2, 2020, and an amended complaint she filed in Wisconsin on December 3, 2020. *See Pearson v. Kemp*, No. 20-cv-4809 (N.D. Ga.) ECF Nos. 1-26; *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich.) ECF Nos. 6-16; *Feehan v. Wisconsin Elections Commission*, No. 20-cv-1771 (E.D. Wis.) ECF Nos. 9-16; and *Bowyer v. Ducey*, No. 02-cv-02321 (D. Ariz.) ECF Nos. 1-7.

- d. On October 28, 2019, it was reported that half the country votes on machines made by ES&S. (10/28/19 ProPublic Article, *The Market for Voting Machines is Broken. This Company Has Thrived in It* (Exhibit 114)).
- e. On May 2, 2019, it was reported that three companies dominate the market for voting machines in the country, with ES&S being the largest, followed by Dominion and Hart InterCivic. (5/2/19 NPR Article, *Trips to Vegas*

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

- f. On March 3, 2020, it was reported that ES&S, Dominion, and Hart InterCivic “together control about 90 percent of the U.S. market for voting systems.” (11/3/20 Politico Article, *Playbook PM: Halftime* (Exhibit 123)).
- g. On October 28, 2020, it was reported that ES&S and Dominion together produce the technology used by over three-quarters of U.S. voters, and the third-largest player was Hart InterCivic. (10/28/20 WSJ Article, *Early Voting Shines Spotlight on Consolidated Voting-Equipment Market* (Exhibit 121)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

247. For example, all the states where Ms. Powell and Mr. Giuliani claimed fraud occurred use some aspect of the federal testing and certification program for election technology and software. (NCSL Voting System Standards, *Testing and Certification* (Exhibit 144)). The U.S. Election Assistance Commission (EAC) publicly identifies the voting systems that have been certified by the EAC by county and state. It provides a table on its website where a user can

determine the manufacturer, product, and version of any technology and software used. It shows that Smartmatic was not used in any of the contested states. (U.S. EAC System Certification Process and Table of Voting Systems (Exhibit 145)).<sup>16</sup>

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

**2. Ms. Powell and the Relevant Non-Parties knew Smartmatic's election technology and software were not used to fix, rig, or steal the 2020 U.S. election.**

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

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

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<sup>16</sup> See also <https://www.eac.gov/voting-equipment/system-certification-process>).

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

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

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

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

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

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

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

256. On September 24, 2020, Christopher Wray, Director of the FBI, stated during a hearing before the U.S. Senate Committee on Homeland Security and Government Affairs that “we have not seen, historically, any kind of coordinated national voter fraud effort in a major election, whether it’s by mail or otherwise.” (9/24/20 CNN Transcript (Exhibit 120); *see also* 9/24/20 C-SPAN Website, *FBI Director Says He Has Not Seen National Voter Fraud Effort by Mail*<sup>17</sup>).

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

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<sup>17</sup> Available at <http://www.c-span.org/video/?c4909510/fbi-director-national-voter-fraud-effort-mail>

258. The NASS and NASED also issued a joint statement on October 30, 2020 to “express their confidence in [the] nation’s elections systems, processes, safety and security.” It further stated that “[s]tate election officials have been working diligently to bolster cybersecurity, strengthen existing infrastructure, address election misinformation and disinformation, as well as provide administrative and technical support for local election officials.” And it made clear that “[v]oters and members of the media should be diligent in the face of election misinformation. Think critically about the source of information before repeating or retweeting it ... contact your election official with any questions or concerns and follow verified election official social media accounts.” (10/30/20 NASS and NASED 2020 Election Preparations and Reminders (Exhibit 122)).

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

260. On November 16, 2020, a group of election security specialists issued a statement saying that there was no credible evidence of computer fraud in the 2020 election outcome. These specialists indicated they had studied the security of voting machines, voting systems, and technology used for government elections for decades. They stated “[a]nyone asserting that a US

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

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

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

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

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

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

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

267. On January 6, 2021, Georgia’s Secretary of State, Brad Raffensperger, sent a letter to Congress with a “Point by Point Refutation of False Claims about Georgia Elections.” It described the multiple steps taken to confirm that the Presidential selection result was accurate and the software on the voting machines was accurate. It includes a section that addresses the

allegations regarding Dominion Voting Machines and clearly states the claims were false. (1/6/21 Georgia Secretary of State Letter to Congress (Exhibit 59)).

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

269. Pennsylvania: On November 12, 2020, Governor Tom Wolf tweeted, from his official government account, "Allegations of fraud and illegal activity have been repeatedly debunked. Pennsylvania had a free, fair, and secure election." (11/12/20 Tweet from Governor Tom Wolf (Exhibit 67<sup>18</sup>)).

270. On November 13, 2020 Governor Wolf issued the following statement: "All Pennsylvanians can have confidence in our election system and the accuracy of the vote." "The U.S. Department of Homeland Security's conclusion that our nation had the most secure election in history reaffirms the commitment to protecting our votes by local, state and national officials. Allegations of fraud and unfounded rumors of illegal activity have been repeatedly debunked. Those deliberate and false attacks are un-American and harm our democracy, and we should reject them. I thank the election and cyber-security experts for verifying that our nation's election was protected and secure." (11/13/20 Governor Tom Wolf: U.S. *Election was 'most secure in American history' Federal Agency says* (Exhibit 68<sup>19</sup>)).

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<sup>18</sup> Available at <https://twitter.com/GovernorTomWolf/status/1327026907884478469>.

<sup>19</sup> Available at <https://www.governor.pa.gov/newsroom/u-s-election-was-most-secure-in-american-history-federal-agency-says/>

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

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

273. Nevada: On November 5, 2020, Nevada Governor Steve Sisolak held a press conference, in which he stated: "Nevada is widely recognized as being a leader in election administration, and I continue to have the utmost confidence in the abilities of Nevada's local election officials and Secretary of State Barbara Cegavske to accurately count every eligible vote cast in the Silver State. Our election administration officials are required to keep counting under state law and that is exactly what they'll do until every vote is counted. Despite national pressure, our election officials and public servants continue to prioritize accuracy and fairness in

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<sup>20</sup> Available at <https://twitter.com/dougducey/status/1333603735855976450>

this process. That should make all Nevadans proud. I ask all Nevadans to support our election workers, trust this process and respect the results when they are certified as final.” (11/5/20 Nevada Governor, *Gov. Sisolak issues statement on President Trump’s comments on the election* (Exhibit 75<sup>21</sup>)).

274. And Nevada state officials have expressly stated after certification of the election results that there was no evidence of voter fraud. In Secretary of State Barbara Cegavske’s “*Facts v. Myths: Nevada 2020 Post-General Election*” document, posted on the Nevada Secretary of State website, the Secretary stated, “we have yet to see any evidence of widespread fraud.” (Facts v. Myths: Nevada 2020 Post-General Election (Exhibit 76<sup>22</sup>)).

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

276. Fifth, election technology companies issued public statements rejecting claims of fraud or rigging the 2020 U.S. election. For example, on November 7, 2020, Dominion issued a statement that “[t]here are no credible reports or evidence of any system software errors in Georgia or Michigan.” (11/7/20 Dominion Website, *Statement on Viral Claims/Rumors About Dominion Voting Systems* (Exhibit 88)).

277. On November 12, 2020, Dominion’s website included a page to set the record straight, including that the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) has debunked claims of voter fraud. It further stated “[n]o

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<sup>21</sup> Available at  
[https://gov.nv.gov/News/Press/2020/Governor\\_Sisolak\\_issues\\_statement\\_on\\_President\\_Trump%E2%80%99s\\_comments\\_on\\_the\\_election/](https://gov.nv.gov/News/Press/2020/Governor_Sisolak_issues_statement_on_President_Trump%E2%80%99s_comments_on_the_election/).

<sup>22</sup> Available at <https://www.nvsos.gov/sos/home/showdocument?id=9191>.

credible reports or evidence of any software issues exist. While no election is without isolated issues, Dominion Voting Systems are reliably and accurately counting ballots. State and local officials have publicly confirmed the integrity of the process.” (11/1/20 Dominion Website, *Election 2020: Setting the Record Straight* (Exhibit 87); 11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 90); 11/17/20 Dominion Website, *Setting the Record Straight, Facts & Rumors* (Exhibit 91); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts& Rumors* (Exhibit 95)).

**3. Ms. Powell and the Relevant Non-Parties knew Smartmatic’s election technology and software did not, and does not, send votes cast in the United States to foreign countries.**

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

279. First, as discussed above, before the disinformation campaign, there was publicly available and easily accessible information that Smartmatic was used in only one county in the 2020 U.S. election, Los Angeles County. This information also made clear that the system Smartmatic provided to Los Angeles county does not count, tabulate, or store votes. The technology and software used by Smartmatic in the 2020 U.S. election did not count votes, much less send them to a foreign country for counting.

280. Second, there were articles available on Smartmatic’s website before and during the disinformation campaign about the use of Smartmatic’s technology and software in Los Angeles County (and owned by the county). These articles show that the technology is not connected to the Internet, are not used to count votes, and do not store any data. It is noted that

county officials tabulate votes by counting the paper ballots produced by the devices and cast by voters. (11/11/20 Smartmatic Website, *Los Angeles County—Voting Solutions for All People* (Exhibit 128)).

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

282. Fourth, before and during the disinformation campaign, various companies providing election technology issued statements contradicting claims related to votes being sent to foreign countries. (11/13/20 Scytl Website, *Scytl strongly denies the false information related to the U.S. elections* (Exhibit 131<sup>23</sup>); 11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 90); 11/21/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 92); 11/26/20 Dominion Website, *Statement from Dominion on Sidney Powell’s Charges* (Exhibit 94); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 95)).

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

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<sup>23</sup> Available at, <https://www.scytl.com/en/fact-checking-regarding-us-elections-debunking-fake-news/>

**4. Ms. Powell and the Relevant Non-Parties knew that Smartmatic's election technology and software were not compromised or hacked during the 2020 U.S. election.**

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

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

286. Second, before and during the disinformation campaign, there was publicly available information that showed there were no issues in the one county where Smartmatic's election technology and software were used during the 2020 U.S. election, Los Angeles County. Smartmatic and its system came through the 2020 election in that county "with flying colors" as noted by an initial case study made available on its website. There are no reports that Smartmatic's election technology and software had been compromised or hacked. (Smartmatic Website, *Los Angeles County – Voting Solutions for All People* (Exhibit 128); 11/10/20 Los Angeles Times Article, *L.A.'s \$300-million voting systems gets high marks as votes trickle in across California* (Exhibit 127)).

287. There was also information publicly available before the disinformation campaign about the work of Los Angeles County to certify Smartmatic's voting system for use, including

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

288. The Smartmatic system that was actually used in the general election for Los Angeles County was VSAP 2.1, which was certified by California in October 2020. California Secretary of State Padilla said in a press release that VSAP was a “historic milestone in election administration” and that the “public design and testing process for VSAP was one of the lengthiest and most inclusive ever conducted for voting technology.”<sup>24</sup> Secretary Padilla said that the system underwent functional testing and source code review, among other things, and that California’s Voting System Standards exceed the Voluntary Voting System Guidelines recommended by the U.S. Elections Assistance Commission and “are considered the most rigorous in the country.” In his October 1, 2020 certification, Secretary Padilla stated that VSAP 2.1 “satisfies the accuracy, accessibility, usability, and security standards set forth in the California Voting Systems Standards and California law.” (10/1/20 California Secretary of State, *Conditional Approval of Los Angeles County’s Voting Solutions for All People (VSAP) 2.1 Voting Systems* (Exhibit 51<sup>25</sup>)).

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<sup>24</sup> Available at <https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/ap20091-los-angeles-county-vsap-21-voting-system-certified>).

<sup>25</sup> Available at, <http://votingsystems.cdn.sos.ca.gov/vendors/LAC/vsap2-1/vsap21-cert.pdf>

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

- a. On November 4, 2020, the Director of the Cybersecurity and Infrastructure Security Agency issued a statement that “after millions of Americans voted, we have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies.” (11/4/20 Statement from CISA Director Krebs Following Final Day of Voting (Exhibit 125)).
- b. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a joint statement that “[t]he November 3<sup>rd</sup> election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result.” It further stated, “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” And “[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission’s (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.” “While we know there are many unfounded claims and opportunities for misinformation about the process of our selections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too.” (11/12/20 Cybersecurity &

Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 130)).

- c. On November 12, 2020, a competitor company's Vice Chair, Sam Derheimer, signed the Joint Statement from the Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees providing that "There is no evidence that any voting system deleted or lost votes, changed votes, or was in any compromised." (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committee* (Exhibit 130)).
- d. On December 1, 2020, Attorney General Barr specifically addressed Ms. Powell's, Mr. Giuliani's, and Fox's claims about Smartmatic and Dominion in an interview with the Associated Press: "There's been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven't seen anything to substantiate that." (12/1/20 AP Article, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 142)).

290. Fourth, there was publicly available information by government officials that have authority over the election process about procedures and processes to test and certify any election technology used, including for the 2020 U.S. election. The information clearly shows

various and rigorous testing and certification processes to prevent hacking or any compromise to the voting systems during the election. (CISA, #Protect2020 Rumor vs. Reality (Exhibit 147<sup>26</sup>)).

291. Fifth, before and during the disinformation campaign, Smartmatic's website indicated that its technology had been validated by institutions such as the Carter Center, the United Nations, the Organization of American States, and the European Union. Smartmatic also provided information that its election software had processed more than 5 billion votes over 20 years without a breach. (11/27/20 Smartmatic Website, *Fact-checked* (Exhibit 85)).

**5. Ms. Powell and the Relevant Non-Parties knew that Smartmatic's election technology and software were not used by Dominion during the 2020 U.S. election.**

292. Information was available to Ms. Powell, Mr. Giuliani, and Fox that showed their statements about Smartmatic's election technology and software being used by Dominion in the 2020 U.S. election were false. Ms. Powell, Mr. Giuliani, and Fox either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

293. First, before and during the disinformation campaign, there was publicly available and easily accessible information that shows Smartmatic and Dominion are two separate companies.

294. For example, the state filings for both companies, Smartmatic and Dominion, shows that they are two separate companies. (3/30/20 Smartmatic USA Corp. Annual Report filed with Florida Secretary of State (Exhibit 119<sup>27</sup>); 6/25/10 Dominion Voting Systems, Inc. Statement of Foreign Entity Authority filed with Colorado Secretary of State (Exhibit 102<sup>28</sup>)).

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<sup>26</sup> Available at <https://www.cisa.gov/rumorcontrol>.

<sup>27</sup> Available at <http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=forp-> at

295. There was also litigation between the companies and the public filings clearly establish the companies are separate, they are competitors, and that their technology is separate. (9/18/12 Smartmatic Press Release, *Smartmatic International Sues Dominion Voting Systems for Licensing Breach and Improper Business Practices* (Exhibit 104); 5/1/13 Mem. Opinion In *Smartmatic Int'l Corp. v. Dominion Voting Systems Int'l Corp.*, no. 7844-VCP (Del. Chan.) (Exhibit 106<sup>29</sup>)).

296. Second, as discussed above, before and during the disinformation campaign, there was publicly available and easily accessible information that Smartmatic's election technology and software were used in only one county in the 2020 U.S. election, Los Angeles County. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Smartmatic/Los Angeles County*, Exhibit 151)).

297. Smartmatic's own website also had information that made clear that Smartmatic had no ties to Dominion Voting Systems - no ownership ties, no software leasing, and no business at all between the two companies. It further noted that in 2009, Smartmatic licensed scanning machines from Dominion for use in the Philippines for a Smartmatic election project, which was the only contract with Dominion, that it was short-lived, and ended in a lawsuit. It further noted that that was the first and last time that Smartmatic and Dominion tried to do business together. (11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

298. Third, Dominion's website similarly provided information that made clear it was a distinctly separate company from, and fierce competitor to Smartmatic, and not using

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[f12000002926-35de48ca-c44d-47cf-bc3f-7c7c97626ee5&transactionId=f12000002926-a9e78686-735e-4266-849b-575d71eb1604&formatType=PDF.](https://www.sos.state.co.us/biz/ViewImage.do?masterFileId=20101359683&fileId=2010135963)

<sup>28</sup> Available at  
[https://www.sos.state.co.us/biz/ViewImage.do?masterFileId=20101359683&fileId=2010135963,](https://www.sos.state.co.us/biz/ViewImage.do?masterFileId=20101359683&fileId=2010135963)

<sup>29</sup> Available at <https://law.justia.com/cases/delaware/court-of-chancery/2013/ca-7844-vcp.html>

Smartmatic's election technology and software. (11/13/20 Dominion Website, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 90); 11/17/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 91); 11/25/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 93); 11/26/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 94); 12/3/20 Dominion Website, *Election 2020: Setting the Record Straight, Fact Versus Rumors* (Exhibit 95)).

299. Fourth, before and during the disinformation campaign, there was publicly available and easily accessible information related to the election technology used in each county and state that showed the specific systems and technology and software used in such county and state, along with the manufacturers identity. This information showed that Smartmatic's technology and software were not used by Dominion in the 2020 U.S. election.

300. For example, Verified Voting (<http://www.verifiedvoting.org>) keeps a running map of all voting equipment in the United States, broken down by county. It separates voting equipment into three categories—hand marked paper ballots, ballot marking devices (BMDs) and systems, and direct recording electronic (DRE) systems. It identifies for each county in every state the polling place equipment, including the type of equipment used, the make, and the model. Any company that makes the equipment used is identified. The specific technology and software used by Dominion in the 2020 U.S. election can be found and is described in detail for each county. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Dominion Voting Systems* (Exhibit 152)).

**6. Ms. Powell and the Relevant Non-Parties knew that Smartmatic had not been banned in the United States (or any individual state).**

301. Information was available to Ms. Powell, Mr. Giuliani, and Fox that showed their statements about Smartmatic being banned in the United States (or any individual state) were false. Ms. Powell, Mr. Giuliani, and Fox either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

302. First, as discussed above, before the disinformation campaign, there was publicly available and easily accessible information that showed Smartmatic's technology and software was used in one county in the 2020 U.S. election, Los Angeles County. (Verified Voting Website, *The Verifier – Search – November 2020, Filtered for Make: Smartmatic/Los Angeles County* (Exhibit 151)). Los Angeles County would not have been able to use Smartmatic for the 2020 U.S. election if it had been banned from use. For example:

- a. On June 13, 2018, Los Angeles County entered into a contract with Smartmatic as the contractor for the County's "Voting Solutions for All People" ("VSAP") voting technology. (7/2/18 Registrar-Recorder/County Clerk signs contract with Smartmatic USA (Exhibit 49<sup>30</sup>)).
- b. Los Angeles County used VSAP as its voting technology in the November 2020 general election. (10/15/20 Voting Technologies in Use by County (Exhibit 52<sup>31</sup>)).

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<sup>30</sup> Available at <https://vsap.lavote.net/2018/07/02/registrar-recorder-county-clerk-signs-contract-with-smartmatic-usa/>.

<sup>31</sup> Available at <https://votingsystems.cdn.sos.ca.gov/oversight/county-vsystech/vot-tech-by-counties-2020-11.pdf>,

- c. California's Secretary of State adopted testing standards that met or exceeded the federal ones set by the EAC. (California Voting System Standards at 5 (Exhibit 48<sup>32</sup>)).

303. Second, before the disinformation campaign, there was publicly available information, including on Smartmatic's own website, that showed its election technology and software were used in the state of Utah for the 2016 Republican Presidential Caucus. Again, this would not have been the case if it had been banned.

304. Third, before and during the disinformation campaign, it was publicly known that Smartmatic was a member of the Government Facilities Sector, Government Coordinating Council, Election Infrastructure Subsector, along with 39 other members and a government coordinating council. (Government Facilities Sector – Election Infrastructure Subsector: Charters and Membership List (Exhibit 148<sup>33</sup>)). Smartmatic would not have been allowed to participate if it had been banned from the United States, given that it was formed as part of the Department of Homeland Security's ongoing work to build trusted relationships across private and public sectors to help keep the nation's election systems secure. (12/14/17 Department of Homeland Security Press Release, *DHS and EAC Meet with Election Industry Members to Launch Sector Coordinating Council* (Exhibit 108)).

305. Fourth, before the disinformation campaign, there was publicly available information that contradicted statements that Smartmatic was denied use in the State of Texas. Texas publicly identified on the website of its Secretary of State that it employed election systems from three companies: (1) Dominion, (2) ES&S, and (3) Hart InterCivic. There was also

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<sup>32</sup> Available at <https://admin.cdn.sos.ca.gov/regulations/elections/california-voting-system-standards.pdf>

<sup>33</sup> Available at <http://www/cisa.gov/government-facilities-election-infrastructure-charters-and-memberships>.

information publicly available that showed that it was Dominion - not Smartmatic - that had previously had issues with the State of Texas, but regardless, any issues had been resolved by the State of Texas since it selected and certified Dominion as one of its voting systems. (VoteTexas.gov, *How to Vote* (Exhibit 149<sup>34</sup>); Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 150<sup>35</sup>)).

306. Fifth, before and during the disinformation campaign, there was publicly available information that before use in elections, voting systems undergo hardware and software testing to ensure they are consistent with state and/or federal requirements. Under these programs, voting system manufacturers submit their systems to undergo testing and review by an accredited laboratory or state testers. This testing checks if systems function as designed and meet applicable state and/or federal requirements or standards for accuracy, privacy, and accessibility. Certification testing usually includes a review of a system's source code as well as environmental, security, and functional testing. (CISA, *#Protect2020 Rumor vs. Reality* (Exhibit 147)). A company banned in the United States would not meet these requirements.

**7. Ms. Powell and the Relevant Non-Parties knew that Smartmatic was not a Venezuelan company and that corrupt dictators did not control Smartmatic.**

307. Information was available to Ms. Powell, Mr. Giuliani, and Fox that showed their statements about Smartmatic being a Venezuelan company and being controlled by corrupt dictators were false. Ms. Powell, Mr. Giuliani, and Fox either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

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<sup>34</sup> Available at <https://www.votetexas.gov/voting/how.html>.

<sup>35</sup> Available at <https://www.sos.texas.gov/elections/laws/dominion.shtml>

308. First, before and during the disinformation campaign, information about the corporate status of Smartmatic was publicly available and easy to confirm from state and other public filings. It was founded and maintains its base office in Boca Raton, Florida. Indeed, its filing with the Florida Secretary of State identifies that it is incorporated in Delaware and has a business address in Boca Raton, Florida. (7/13/12 Florida Division of Corporations Smartmatic USA Corp. Filing Record, Exhibit 103)).

309. Second, before and during the disinformation campaign, information about the corporate status of Smartmatic was publicly available from its website. Its website notes it is a U.S. company, regardless of where its founders or shareholders happened to be born. It states that it has no ties to governments or political parties - no alliances, relationships or “deals” with any politician, political organization, or government. It also states that its founders adhere to a strict ethics code that prohibits them from making political donations. (11/14/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 83); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

310. Third, before and during the disinformation campaign, information about Smartmatic’s history with Venezuela was publicly available from its website and other sources. The company was founded by three engineers from Venezuela. And the company has made public statements that they do not have any ties to Venezuela or Hugo. (10/30/06 Fox News Article, *Voting Machines Cos: No Ties to Chávez* (Exhibit 101)).

311. In fact, a March 2020 Politico article referenced in one of Fox News’s broadcasts by Mr. Dobbs indicated that Smartmatic never had ties to the Venezuelan government (but simply supplied voting machines used in elections there) and that there is no ownership by the Venezuelan government in the company. (3/3/20 Politico Article, *Los Angeles Voting Experiment* (Exhibit 117)).

312. Fourth, before and during the disinformation campaign, information about Smartmatic's participation in election projects in Venezuela was publicly and widely known. Smartmatic did elections there from 2004 to 2017, but stopped its work there after blowing the whistle on false reporting for the 2017 election. Indeed, its technology helped prove the government was reporting false turnout numbers. (3/6/18 Business Wire Article, *Smartmatic Announces Cease of Operations in Venezuela* (Exhibit 109); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

**8. Ms. Powell and the Relevant Non-Parties knew Smartmatic's election technology has not been designed and used to fix, rig, or steal elections.**

313. Information was available to Ms. Powell, Mr. Giuliani, and Fox that showed their statements about Smartmatic's election technology and software being designed and used to fix, rig, or steal elections were false. Ms. Powell, Mr. Giuliani, and Fox either ignored this information, and thereby acted with reckless disregard, or published their false statements knowing they were false based on this information.

314. First, before and during the disinformation campaign, information about audited elections that Smartmatic participated in, all over the world, was publicly available, and such information does not support statements that it has been used to fix, rig, or steal elections.

315. Second, before and during the disinformation campaign, information about the success and security of Smartmatic's election technology and software was publicly available from its website. For example, its website stated that its election technology had handled billions of votes in election projects on five continents, without a single discrepancy and has never been compromised. Its election technology and software were designed to ensure secure, transparent, and auditable elections (and not to change votes or rig elections). (Smartmatic Website, *Facts About Smartmatic* (Exhibit 86)).

316. There was publicly available information at the time of the disinformation campaign to show that third-party validators had authenticated Smartmatic's technology, including the State of California, PriceWaterhouseCoopers, and the U.S. Election Assistance Commission. The United Nations, Organization of American States, and the European Union have also validated Smartmatic's technology. Former U.S. President Jimmy Carter of the Carter Center has called Smartmatic's electronic voting solution in Venezuela "the best in the world." (9/21/12 Smartmatic Press Release, *Carter States that Election Process in Venezuela is "Best in the World"* (Exhibit 105); 11/27/20 Smartmatic Website, *Smartmatic Fact-checked* (Exhibit 85)).

317. Third, as discussed above, before and during the disinformation campaign, information about the certification of Smartmatic's election technology for Los Angeles County and Smartmatic's registration with the U.S. Election Assistance Commission was publicly available.

318. Fourth, before and during the disinformation campaign, information was publicly available that showed Smartmatic had been approved as a Department of Defense vendor and a founding member of the Department of Homeland Security Election Infrastructure Sector Coordinating Council.

**C. Ms. Powell filed sham lawsuits with unsubstantiated and gratuitous allegations about Smartmatic.**

319. Ms. Powell is a lawyer. She understood the legal exposure that accompanied making defamatory and disparaging statements about Smartmatic. With that understanding, Ms. Powell sought to hedge her bets by mentioning Smartmatic in four lawsuits filed after the Trump Campaign and President Trump publicly distanced her from their legal strategy. On information and belief, the allegations she made about Smartmatic in those lawsuits were cover for her

disinformation campaign against Smartmatic. The allegations made about Smartmatic were not in good faith.

**1. Ms. Powell filed the lawsuits in bad faith.**

320. Ms. Powell filed four lawsuits containing accusations about Smartmatic: *Pearson v. Kemp*, No. 20-cv-4809 (N.D. Ga., filed on November 25, 2020); *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich., filed on November 25, 2020); *Feehan v. Wisconsin Elections Commission*, No. 20-cv-1771 (E.D. Wis., filed on December 1, 2020); and *Bowyer v. Ducey*, No. 02-cv-2321 (D. Ariz., filed on December 2, 2020).

321. Ms. Powell filed each of these four lawsuits in bad faith, knowing that the plaintiffs she represented lacked standing, were barred from bringing claims against state officials under the Eleventh Amendment, were precluded by the equitable doctrine of laches from filing the complaints, brought claims that already had been rendered moot, and failed to state a claim.

322. Of the four lawsuits brought by Powell, all resulted in immediate dismissals for the very reasons Powell knew these suits were shams: lack of standing, Eleventh Amendment immunity, laches, mootness, and failure to state a claim, among other reasons. *Pearson*, 2020 WL 7040582 (N.D. Ga. Dec. 7, 2020); *King*, 505 F. Supp. 3d 720 (E.D. Mich. Dec. 7, 2020); *Feehan*, 506 F. Supp. 3d 596 (E.D. Wis. Dec. 9, 2020); *Bowyer*, 506 F. Supp. 3d 699 (D. Ariz. Dec. 9, 2020).

323. Of those dismissals, three courts issued written opinions emphasizing the bad faith in which the lawsuits had been filed: *King*, *Feehan*, and *Bowyer*. First, all three courts expressly criticized the complaints themselves for their specious allegations and ulterior motives:

- a. The *Bowyer* court stated: “Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and

procedure in federal court. They most certainly cannot be the basis for upending Arizona’s 2020 General Election.” 506 F. Supp. 3d at 724.

- b. The *King* court noted: “[T]his lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People’s faith in the democratic process and their trust in our government.” 505 F. Supp. 3d at 739.
- c. The *Feehan* court made two such proclamations. First, “Federal judges do not appoint the president in this country. One wonders why the plaintiffs came to federal court and asked a federal judge to do so.” 506 F. Supp. 3d at 600. Second, “The plaintiff wants Donald J. Trump to be certified as the winner of the Wisconsin election as a result of the plaintiff’s vote. But what he asks is for Donald J. Trump to be certified the winner as a result of judicial fiat.” *Id.* at 610.

324. Second, the courts emphasized the lack of factual support for the claims at issue.

The *Bowyer* court found:

- a. “[T]he Complaint’s allegations are sorely wanting of relevant or reliable evidence....” 506 F. Supp. 3d at 706.
- b. “Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections.” *Id.* at 721.
- c. “The Complaint is equally void of plausible allegations that Dominion voting machines were actually hacked or compromised in Arizona during

the 2020 General Election ... These concerns and stated vulnerabilities, however, do not sufficiently allege that any voting machine used in Arizona was in fact hacked or compromised in the 2020 General Election. Rather, what is present is a lengthy collection of phrases beginning with the words ‘could have, possibly, might,’ and ‘may have.’” *Id.* at 723.

- d. “Plaintiffs face serious jurisdictional impediments in bringing their claims to federal court at the eleventh hour. These insurmountable legal hurdles are exacerbated by insufficiently plead [sic] allegations of fraud, rendered implausible by the multiple inadmissible affidavits, declarations, and expert reports upon which their Complaint relies.” *Id.* at 724.

325. The *King* court likewise rejected plaintiffs’ equal protection claim for lack of evidence: “The closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were possible....With nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs’ equal protection claim fails.” 505 F. Supp. 3d at 738.

326. Third, two of the courts gave significant weight to the plaintiffs’ delay in filing the lawsuits. The delay in filing the lawsuits is inconsistent with pressing a valid legal claim. Ms. Powell’s delay, however, is consistent with seeking to use litigation as a cover for her disinformation campaign against Smartmatic.

327. On the issue of delay, the *King* court stated:

If Plaintiffs had legitimate claims regarding whether the treatment of election challengers complied with state law, they could have brought their claims well in advance of or on Election Day - but they did not ... If

Plaintiffs had legitimate claims regarding the manner by which ballots were processed and tabulated on or after Election Day, they could have brought the instant action on Election Day or during the weeks of canvassing that followed - yet they did not ... If Plaintiffs had legitimate concerns about the election machines and software, they could have filed this lawsuit well before the 2020 General Election - yet they sat back and did nothing ... Plaintiffs proffer no persuasive explanation as to why they waited so long to file this suit ... Indeed, where there is no reasonable explanation, there can be no true justification.” 505 F. Supp. 3d at 731–32.

328. The *Bowyer* court similarly noted: “Plaintiffs’ Complaint includes a hodge-podge of alleged misconduct by Arizona elections officials, occurring on various dates over the past weeks, months, and even years ... Plaintiffs offer no reasonable explanation why their claims were brought in federal court at this late date.” 506 F. Supp. 3d at 717–18.

329. Fourth, the courts focused on the mootness of the plaintiffs’ claims, emphasizing repeatedly that the relief sought could not be granted because it required enjoining actions that already had occurred.

a. The *King* court: “This case represents well the phrase: ‘this ship has sailed.’ The time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court. For those reasons, this matter is moot.” 505 F. Supp. 3d at 729.

b. The *Feehan* court: “The plaintiff asks the court to prohibit from occurring an event that has already occurred—an event that occurred the day before he filed this lawsuit and nine days before the court issues this order. He asks the court to enjoin defendant Evers from transmitting the certified election results—an event that already has occurred. He asks the court to order that certain votes not be counted, when the vote counting has been over since November 29.” 506 F. Supp. 3d at 613.

- c. The *Bowyer* court: “Because this Court cannot de-certify the results [of the Arizona election], it would be meaningless to grant Plaintiffs any of the remaining relief they seek.” 506 F. Supp. 3d at 720.

330. The flaws of Ms. Powell’s lawsuits were readily apparent and known to Ms. Powell when she filed the lawsuits. Ms. Powell must have known when the lawsuits were filed that they would not and could not succeed in their requested relief. The filing of the lawsuits was, however, consistent with her fundraising efforts and disinformation campaign. Ms. Powell could not continue to solicit funds from supporters of President Trump for a legal defense without filing litigation.

**2. Ms. Powell included irrelevant and gratuitous allegations about Smartmatic in her lawsuits.**

331. In the four lawsuits filed by Ms. Powell, none of them reference Smartmatic for anything other than gratuitous and false background allegations. Not one of the four complaints references Smartmatic in any of the claims, and not one references Smartmatic in connection with the 2020 U.S. election or anything connected or related to the 2020 U.S. election. *Pearson*, No. 20-cv-4809, ECF No. 1 (N.D. Ga. Nov. 26, 2020); *King*, No. 20-cv-13134, ECF No. 1 (E.D. Mich. Nov. 19, 2020); *Feehan*, No. 20-cv-1771, ECF No. 1 (E.D. Wis. Dec. 1, 2020); *Bowyer*, No. 020-cv-2321, ECF No. 1 (D. Ariz. Dec. 2, 2020). Ms. Powell did not include allegations about Smartmatic in these lawsuits because Smartmatic was actually pertinent to the claims. On information and belief, Ms. Powell included allegations about Smartmatic in the lawsuits to try to create cover for the disinformation campaign.

332. The allegations that Ms. Powell included in the complaints were not related to the primary theme of the disinformation campaign: that Smartmatic’s election technology and software were widely used in the 2020 U.S. election and fixed, rigged and stole the election for

Joe Biden and Kamala Harris. Instead, Ms. Powell’s lawsuits include allegations that: (a) purport to describe Smartmatic’s ties to Venezuela and other foreign countries, (b) reference a 2004 election in Venezuela in which Smartmatic’s election technology and software were allegedly used to rig the election, and (c) reference a letter written by a Congresswoman in 2006 requesting an investigation of Smartmatic based solely on its “foreign ownership” and acquisition of Sequoia – a company Smartmatic sold in 2007.

333. None of the allegations that Ms. Powell made about Smartmatic in the lawsuits relate to the primary messages that the Ms. Powell, Mr. Giuliani, and Fox spread as part of the disinformation campaign; namely, that (a) Smartmatic’s election technology and software were widely used in the 2020 U.S. election; (b) Dominion used Smartmatic’s election technology and software in the 2020 U.S. election; (c) Smartmatic’s election technology and software fixed, rigged and stole the 2020 U.S. election; (d) Smartmatic’s election technology and software were compromised or hacked during the 2020 U.S. election; (e) Smartmatic’s election technology and software sent votes overseas during the 2020 U.S. election; and (f) Smartmatic had been previously banned from providing election technology and software in the United States.

334. Moreover, none of the allegations that Ms. Powell included in her lawsuits were relevant or pertinent to the claims brought in the lawsuits. The allegations about Smartmatic were gratuitous. For example, in *Pearson* the plaintiffs brought the following claims:

- a. Plaintiffs claimed violations of the Elections Clause of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to any election technology and software.
- b. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of equal protection regarding “invalid enactment of regulations affecting observation and monitoring of the election.” The

alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

- c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process related to "disparate treatment of absentee/mail-in voters among different counties." The alleged violations were unrelated to election technology and software.
- d. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were unrelated to election technology and software.
- e. Plaintiffs claimed "wide-spread ballot fraud." The alleged fraud was based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

335. The same is true for the claims brought in *King*. The allegations about Smartmatic that were included in the complaint were unrelated to the relief being sought or the violations allegedly giving rise to the relief being sought. The *King* plaintiffs brought the following claims:

- a. Plaintiffs claimed violations of the Elections and Electors Clauses of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to election technology and software.
- b. Plaintiffs claimed violations of the Fourteenth Amendment and § 42 U.S.C. 1983 based on denial of equal protection regarding "invalid enactment of regulations affecting observation and monitoring of the election." The alleged violations were based on allegations of misconduct

by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

- c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were unrelated to election technology and software.
- d. Plaintiffs claimed "wide-spread ballot fraud." The alleged fraud was unrelated to election technology and software.
- e. Plaintiffs claimed violations of Michigan statutory election laws. The alleged violations were unrelated to election technology and software.

336. The *Feehan* lawsuit followed the same pattern. None of the violations alleged were tied to the allegations about Smartmatic. None of the relief requested was related to the allegations about Smartmatic. The plaintiffs in *Feehan* made the following claims:

- a. Plaintiffs claimed violations of the Elections and Electors Clauses of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to election technology and software.
- b. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process related to "invalid enactment of regulations and disparate treatment of absentee vs. mail-in ballots." The alleged violations were unrelated to election technology and software.
- c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic's election technology and software.

- d. Plaintiffs claimed “wide-spread ballot fraud.” The alleged fraud was unrelated to election technology and software.

337. Finally, none of the claims in *Bowyer* related to the allegations that Ms. Powell included in the complaints about Smartmatic. The allegations about Smartmatic in *Bowyer* were irrelevant to the requested relief and claims. The plaintiffs in *Bowyer* raised the following claims:

- a. Plaintiffs claimed violations of the Elections and Electors Clauses of the U.S. Constitution and 42 U.S.C. § 1983. The alleged violations were unrelated to election technology and software.
- b. Plaintiffs claimed violations of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. 1983. The alleged violations were unrelated to election technology and software.
- c. Plaintiffs claimed violations of the Fourteenth Amendment and 42 U.S.C. § 1983 based on denial of due process as to the right to vote. The alleged violations were based on allegations of misconduct by Dominion as opposed to Smartmatic and had nothing to do with Smartmatic’s election technology and software.
- d. Plaintiffs claimed “wide-spread ballot fraud.” The alleged fraud was unrelated to election technology and software.

338. The gratuitousness of Ms. Powell’s allegations about Smartmatic was confirmed in the court rulings dismissing each of these claims. *Pearson*, No. 20-cv-4809, ECF No. 1 (N.D. Ga. Nov. 26, 2020); *King*, No. 20-cv-13134, ECF No. 1 (E.D. Mich. Nov. 19, 2020); *Feehan*, No. 20-cv-1771, ECF No. 1 (E.D. Wis. Dec. 1, 2020); *Bowyer*, No. 020-cv-2321, ECF No. 1 (D. Ariz. Dec. 2, 2020). Not one of the rulings mentions Smartmatic by name or specifically addresses the allegations that Ms. Powell included in the complaints about Smartmatic.

339. Ms. Powell knew when she filed these complaints that the allegations regarding Smartmatic had nothing to do with the claims brought against the named defendants in each case. Ms. Powell spent a month telling people that Smartmatic had perpetrated a massive election fraud by using its election technology and software to steal the 2020 U.S. election. However, in her lawsuits, including the ones discussing “wide-spread ballot fraud,” Ms. Powell never alleged that Smartmatic participated in that fraud. Nor were any of her allegations about Smartmatic relevant to the claims.

**3. Ms. Powell had obvious reasons to doubt the credibility of the “witnesses” she used in the lawsuits.**

340. Ms. Powell attached a declaration, a statement, and an affidavit mentioning Smartmatic in some of the complaints she filed. Ms. Powell attached an anonymous declaration to four of the lawsuits (the “Anonymous Declaration”). Ms. Powell attached a statement by Ana Mercedes Díaz Cardozo to four of the lawsuits (the “Cardozo Statement”). Ms. Powell attached an affidavit by Juan Carlos Cobucci to one of the lawsuits (the “Cobucci Affidavit”). Ms. Powell knew or had obvious reasons to doubt the veracity of the declaration/statements.

341. ***Anonymous Declaration:*** Ms. Powell knew the Anonymous Declaration was not reliable and/or had obvious reasons to doubt the veracity of the Anonymous Declaration. First, the declaration makes an impossible claim. The declarant claims to have been present at discussions in or after February 2009 in which Hugo Chávez offered to pay Smartmatic to create or modify its voting system to rig elections, and then the declarant claims that he “closely observed” this system rig an election three years earlier, in 2006. This is clearly impossible absent the invention of time travel.

342. Second, the declaration contradicts Ms. Powell’s own statements about Smartmatic. Ms. Powell stated during the Fox programs that Smartmatic was formed in 2004 to

fix and rig elections for Hugo Chávez. The declarant, however, states that Mr. Chávez met with Smartmatic in or after February 2009 to discuss fixing elections. Smartmatic could not have been formed in 2004 to fix elections for Mr. Chávez – as Ms. Powell stated – if Smartmatic did not meet with Mr. Chávez until 2009 (again, subject to the invention of time travel).

343. Third, the declaration makes claims that go well beyond his/her/its professed personal knowledge and expertise. The declarant claims to have been a military officer in Venezuela. He then declares:

[T]he software and fundamental design of the electronic electoral system and software of Dominion and other election tabulating companies relies upon software that is a descendant of the Smartmatic Electoral Management System. In short, the Smartmatic software is in the DNA of every vote tabulating company's software and system.

344. This is beyond a leap of faith. The declarant claims no technical expertise. The declarant claims no relationship or firsthand knowledge of every “election tabulating compan[y]” in the world. He/she/it does not even claim a relationship or firsthand knowledge of Dominion. He/she/it does not claim any firsthand knowledge of the “software and system” used by “every vote tabulating company.” The declarant's wild overreach is another reason that Ms. Powell knew or had obvious reasons to doubt the declarant's veracity.

345. Fourth, the declarant's description of Smartmatic's role in Venezuela is inconsistent with readily verifiable facts about elections in Venezuela. For example, the declarant says Smartmatic joined a conspiracy to create a voting system that could “change votes in elections from votes *against* persons running the Venezuelan government to votes *in their favor* in order to maintain control of the government.” That claim, however, is inconsistent with Smartmatic's public announcement in 2017 that the Venezuelan government reported election results different than the actual vote. Smartmatic would have no reason to publicly announce that

the Venezuelan government had misreported the election results if Smartmatic was conspiring with the Venezuelan government.

346. Similarly, the declarant states that the system Mr. Chávez wanted designed would “not leave any evidence of the changed votes.” But Smartmatic’s election technology and software create paper trails for purposes of auditing the election results. This was true with the election technology and software used in Venezuelan elections. This is known to anyone who participated in the Venezuelan elections and readily verifiable by third-party watchers of the Venezuelan elections. A paper trail for audit purposes is inconsistent with “not leav[ing] any evidence of changed votes.”

347. Fifth, the declarant’s description of the 2013 election is inconsistent with his/her/its description of how Smartmatic’s election technology and software work. The declarant states that during that election, Nicolas Maduro “ordered network controllers to take the internet itself offline in practically all parts in Venezuela and to change the results” and then they “turned the internet back on” after two hours. That description cannot be reconciled with the declarant’s claim that Smartmatic’s election technology and software could change votes from one candidate to another. Mr. Maduro would not have needed to “take the internet itself offline” if Smartmatic’s technology and software can simply switch votes in an undetectable way.

348. Sixth, if the declarant was Leamsy Villafaña José Salazar, as some reports have indicated, then the declaration is inconsistent with prior statements that have been attributed to Mr. Salazar and that were available to Ms. Powell. Mr. Salazar was a source for *Boomerang Chávez: The Fraud*, and reportedly discussed potential voting fraud with the book’s author. The book makes no mention of the meetings that the declarant claims occurred in or after February 2009. Mr. Salazar is described in *Boomerang Chávez* as claiming to have no awareness of voting fraud until 2013, long after the meetings that the declarant now claims to have attended.

349. **Cardozo Statement:** Ms. Powell knew the Cardozo Statement was not reliable and/or had obvious reasons to doubt the veracity of the Cardozo Statement. One month before signing the Statement, on October 16, 2020, Ms. Cardozo signed an “Anniversary Message” to “Asgardians” as the “Former Prime Minister” of the “space nation” of “Asgardia.” Smartmatic takes no position on Asgardia and does not criticize Ms. Cardozo’s involvement with Asgardia. It appears to be a well-intentioned group. However, Ms. Cardozo’s prominent role with Asgardia in 2020 alerted or should have alerted Ms. Powell that Ms. Cardozo’s focus in 2020 was not on Smartmatic’s involvement with the U.S. election.

350. First, Ms. Cardozo does not claim to have any knowledge of Smartmatic’s role in the 2020 U.S. election. Nor does she claim to have any knowledge of the election technology and software used by any voting company in the 2020 U.S. election. She does not claim any knowledge of election technology and software other than what may have been used in the 2004 election in Venezuela.

351. Second, Ms. Cardozo’s claim that she is familiar with the Smartmatic election technology and software used in 2004 is not consistent with her claim of being fired from her position. Ms. Cardozo states that she received “a letter in March 2004 stating that [her] position was trusted and trust had been lost in [her] and [she] was fired from service.” Venezuela had a referendum election in August 2004 and a regional election in October 2004. Based on Ms. Cardozo’s termination, Ms. Powell knew or should have known that Ms. Cardozo could not have firsthand knowledge of the election technology and software that was actually used in the 2004 elections months after she had been fired.

352. Third, Ms. Cardozo’s statement contains phrasing that indicates that the same person drafted her statement as drafted the Anonymous Declaration.

Cardozo Statement	Anonymous Declaration
<p>“This conspiracy began more than a decade ago in Venezuela and has spread to countries <i>around</i> the world. It is a conspiracy to <i>unjustly</i> gain and <i>maintain</i> power and wealth. <i>These are</i> political leaders, powerful companies, and <i>others</i> whose purpose is to gain and <i>maintain</i> power by changing <i>people’s free will</i> and subverting the proper course of governing.”</p>	<p>“This conspiracy began more than a decade ago in Venezuela and has spread to countries <i>all over</i> the world. It is a conspiracy to <i>wrongfully</i> gain and <i>keep</i> power and wealth. <i>It involves</i> political leaders, powerful companies, and <i>other persons</i> whose purpose is to gain and <i>keep</i> power by changing the <i>free will of the people</i> and subverting the proper course of governing.”</p>

353. These sentences are the same other than a few word choices – almost as if someone who was drafting them wanted to make them appear slightly different. Regardless, the similarities suggest that the Cardozo Statement and Anonymous Declaration were not drafted by the signatories but instead by someone else who, unlike the signatories, was located in “Dallas County, Texas.” Ms. Powell and her law office are located in Dallas County, Texas.

354. Fourth, Ms. Cardozo’s statement includes obvious speculation regarding events that she did not witness firsthand. For example, Ms. Cardozo states that there is “convincing evidence that there was no genuine competition for the electoral system contract or serious consideration for alternative contracts. There was no due diligence and the bidding was rigged.” But Ms. Cardozo was not involved in that process. Ms. Powell knew or should have known that Ms. Cardozo was speculating regarding events.

355. Fifth, Ms. Cardozo’s statements include assertions that are demonstrably false. For example, Ms. Cardozo states: “It was not surprising that Hugo Chávez and his successors then constantly won the election through the use and manipulation of the Smartmatic voting system.” But Mr. Chávez did not “constantly” win elections after 2004. Just three years later, in 2007, Mr. Chávez lost a critical election that would have expanded his power considerably. Mr. Chávez’s loss is well known and easily discovered. Based on that fact, Ms. Powell either knew

or should have known that Ms. Cardozo either (a) had a tendency towards exaggeration or (b) has her facts wrong.

356. *Cobucci Affidavit.* Ms. Powell knew the Cobucci Affidavit was not reliable and/or had obvious reasons to doubt the veracity of the Cobucci Affidavit. First, Ms. Powell's actions demonstrate that she knew the Cobucci Affidavit was not reliable or credible. Ms. Powell filed the Cobucci Affidavit in one lawsuit on November 25. She did not file the Cobucci Affidavit in any of the other lawsuits, notwithstanding its salacious accusations about Smartmatic. If Ms. Powell believed the Cobucci Affidavit was reliable or credible, she would have used it with the other lawsuits. That she did not indicates that she knew the Cobucci Affidavit could not be relied upon.

357. Second, Mr. Cobucci does not claim to have any knowledge of Smartmatic's role in the 2020 U.S. election. Nor does he claim to have any knowledge of the election technology and software used by any voting company in the 2020 U.S. election. And he does not claim to have any firsthand knowledge regarding the election technology and software actually used in Venezuelan elections. Ms. Powell knew that Mr. Cobucci was not a source that could support her claims about Smartmatic's role in the 2020 U.S. election.

358. Third, the Cobucci Affidavit makes an impossible claim. Mr. Cobucci claims that Antonio Mugica's father was sad in January 2004 because Antonio Mugica had converted to communism and had "manipulated the Smartmatic system utilized during the election to ensure that President Chávez was successful during the 2004 elections." This is impossible. The first election of 2004 took place months later in August 2004. Moreover, Smartmatic did not even win the bid to provide technology for the 2004 elections until well after January 2004. Ms. Powell knew or should have known the timing of the 2004 elections and, therefore, knew or should have known that Mr. Cobucci's claim was not possible.

359. Fourth, the Cobucci Affidavit makes accusations that are inconsistent with readily verifiable facts. For example, Mr. Cobucci states that Mr. Mugica told him in 2004 that Smartmatic would “make sure that the communist party never lost another election in Venezuela.” But it did. Just three years later, in 2007, Mr. Chávez lost a critical election that would have expanded his power considerably. Mr. Chávez’s loss is well known and easily discovered. Moreover, in 2017, Smartmatic publicly announced that the government had reported inaccurate election results. Those readily verifiable facts are inconsistent with Mr. Cobuccio’s statement that Mr. Mugica never wanted to see the communist party lose again in Venezuela, and, was or should have been a red flag to Ms. Powell regarding Mr. Cobuccio’s credibility.

360. Fifth, Mr. Cobucci makes statements that are inconsistent with the statements made in the Cardozo Statement. Mr. Cobucci states that Smartmatic entered a contract with the Venezuelan government in 2002 (in connection with the 2004 election) and was paid “millions of dollars” by the Venezuelan government “from 2003 to 2015.” But, the Cardozo Statement says that Smartmatic was not picked as an election technology supplier for the 2004 election until February 2004 and did not sign a contract until March 2004. Mr. Cobucci’s claims that Smartmatic signed a contract in 2002 and was paid by the Venezuelan government in 2003 are not consistent with what Ms. Powell was allegedly told by Ms. Cardozo.

**D. Ms. Powell used the disinformation campaign against Smartmatic to further her personal and financial interest and acted with ill-will and improper motives.**

361. Ms. Powell not only knowingly participated in publishing false information about Smartmatic during the disinformation campaign, she also did so with ill-will and improper motives for self-promotion and financial and other gains.

362. Ms. Powell understood that making statements about Smartmatic on the various Fox News programs could not change the outcome of the 2020 U.S. election. However, on information and belief, changing the outcome of the 2020 U.S. election was not her motivating factor when engaging in the disinformation campaign. Ms. Powell used the disinformation to curry favor with President Trump and his supporters and to pursue her own personal and financial interests.

363. Ms. Powell is a self-published author of books that question government prosecutions, and that she actively promotes. She gained public attention when she represented Michael T. Flynn, President Trump's first national security advisor, who had pleaded guilty to lying to the FBI but later sought to withdraw his plea.

364. During the disinformation campaign, Ms. Powell's profile increased dramatically when she started claiming that Smartmatic had stolen the 2020 U.S. election and began appearing on Fox News. Ms. Powell went from a limited public profile to being known by the millions of individuals across the country who support President Trump, and they showed tremendous appreciation and admiration for what she was saying. On information and belief, this fame was a motivating factor for Ms. Powell. Ms. Powell understood she could not change the outcome of the election with her disinformation campaign. She could, however, gain a bigger audience for her books and future endeavors.

365. One of those endeavors is the formation of fund-raising organizations. On December 1, 2020, she formed Defending the Republic, Inc., and on January 24, 2021, she formed Restore the Republic PAC. Her fundraising efforts tie directly into the disinformation campaign against Smartmatic. Ms. Powell's fundraising website, <http://defendingtherepublic.org> was created shortly after the 2020 U.S. election to solicit donations, even though the corporate

form was not done until after her participation in the disinformation campaign. Ms. Powell made appearances that promoted her fundraising website while attacking Smartmatic.

**V. Ms. Powell's disinformation campaign irreparably harmed Smartmatic and its election technology and software.**

366. Ms. Powell, Ms. Giuliani, and Fox saw the outcome of the 2020 U.S. election as a final opportunity to curry favor with the outgoing administration and endear themselves to President Trump's millions of supporters. The vehicle they used was a disinformation campaign against Smartmatic as it allowed them to cast themselves as heroes in a story about a villainous foreign company that had stolen the election from President Trump. The predictable and natural result of Ms. Powell's, Mr. Giuliani's, and Fox's disinformation campaign was to destroy Smartmatic's reputation, undermine confidence in Smartmatic's election technology and software, and put people's lives in danger.

367. Fox published Ms. Powell's, Mr. Giuliani's, and its own defamatory statements about Smartmatic on multiple programs in November and December 2020. Ms. Powell's, Mr. Giuliani's, and Fox's defamatory statements were then republished by individuals who read or watched them originally on Fox or on a Fox distribution channel. Ms. Powell, Mr. Giuliani, and Fox knew and understood this republication would happen. As a result, Ms. Powell's defamatory statements about Smartmatic were widely and generally disseminated through publication and republication.

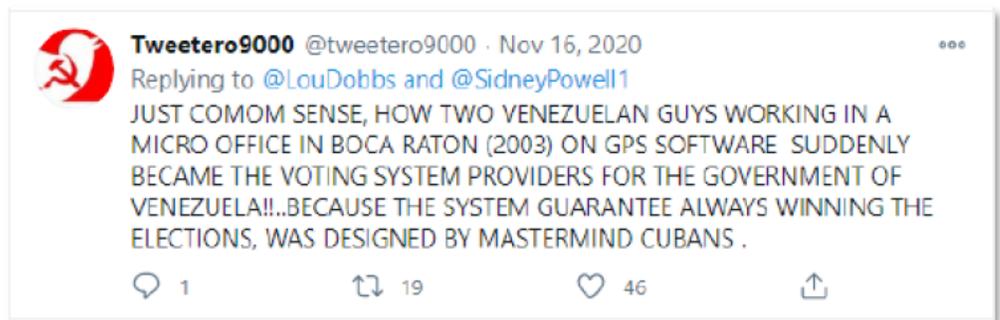
368. Ms. Powell's defamatory statements were a proximate and substantial cause of Smartmatic's name and brand becoming synonymous with election fraud with members of the general public and government officials, particularly those in the United States. Ms. Powell's defamatory statements cast Smartmatic as one of the voting machine companies, along with Dominion, that rigged the 2020 U.S. election; and, even worse, Ms. Powell's defamatory

statements created the impression that Smartmatic's software was not to be trusted because it was Smartmatic's software that switched votes in voting machines regardless of who supplied the machines.

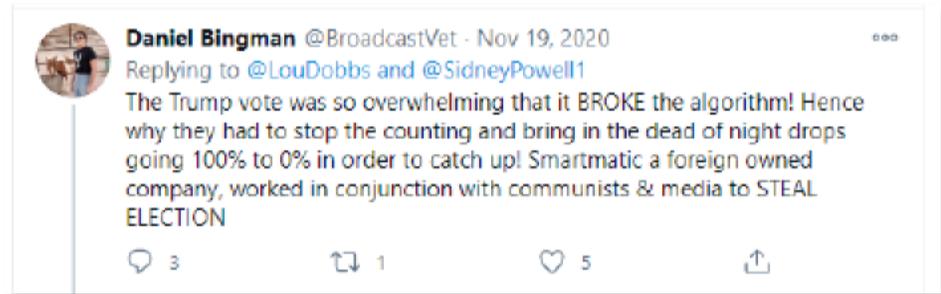
369. Prior to the 2020 U.S. election, Smartmatic was a known and trusted name among individuals responsible for selecting election technology and systems in voting jurisdictions in the United States and across the world. Smartmatic was not, however, a household name. Smartmatic's long history of helping to conduct secure, accurate, and auditable elections was not known among the general public.

370. Ms. Powell's defamatory statements irreparably tarnished Smartmatic's name and brand with members of the general public who read or watched her statements. Below are just a few examples of the reactions people had to Ms. Powell's, Mr. Giuliani's, and Fox's statements:

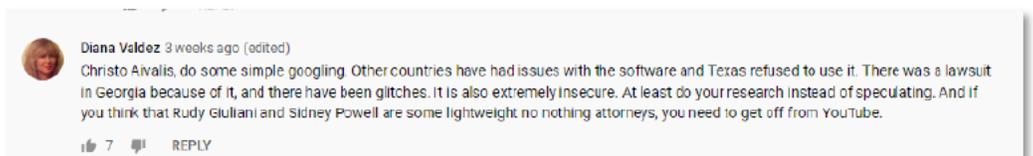
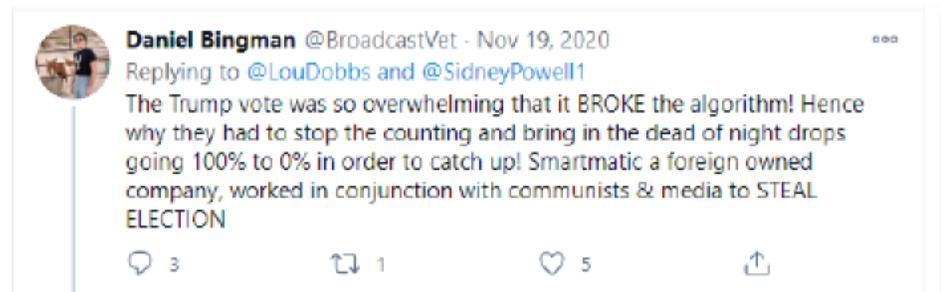
- a. People who read or watched the publications came to believe that Smartmatic's election technology and software was used to rig and steal elections.



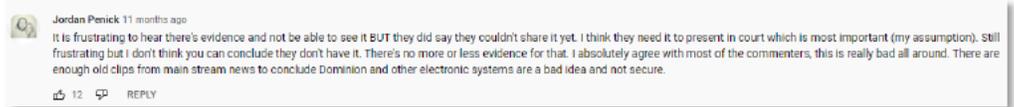
- b. People who read or watched the publications came to believe that Smartmatic's technology and software were used to change votes.



- c. People who read or watched the publications came to believe that Smartmatic's election technology and software were used to rig and steal the 2020 U.S. election.



- d. People who read or watched the publications came to believe that Smartmatic's election technology and software should never be used in an election and are not secure.



371. Smartmatic’s name and brand similarly suffered with government officials, particularly those in the United States, who did not have firsthand experience with Smartmatic and electronic voting technology. Government officials with firsthand knowledge of Smartmatic’s role in the 2020 U.S. election, e.g., officials in Los Angeles County, were happy with how the election was conducted and confident in its outcome. Government officials who watched or read the publications discussed above received a very different message.

372. Ms. Powell’s defamatory statements about Smartmatic and Dominion were a substantial cause of certain government officials becoming critical of the companies, specifically, and electronic voting, generally. Government officials who had not previously opposed the use of electronic voting began to do so following the publications discussed above. This includes government officials directly or indirectly involved in the selection of the voting system used in their jurisdiction and the companies who supply machines and services for the selected voting system.

373. The widespread and general distribution of the publications discussed above, thus, contributed to a crisis situation for Smartmatic. Smartmatic’s reputation has been irreparably tarnished. Smartmatic’s officers and employees have been threatened. Smartmatic’s operations have come under attack—physically and electronically. Smartmatic has incurred the following out-of-pocket expenses as a result.

- a. Smartmatic has been required to spend in excess of \$400,000 on public relations and crisis management following Ms. Powell’s defamatory statements and will spend millions more in the coming years.

- b. Smartmatic has been required to spend in excess of \$100,000 on cybersecurity following Ms. Powell's defamatory statements and will spend millions more in the coming years.
- c. Smartmatic has been required to spend in excess of \$700,000 on retention and recruitment for personnel following Ms. Powell's defamatory statements and will spend millions more in the coming years.

374. Ms. Powell's defamatory statements about Smartmatic, and the republication of those statements, were a substantial cause of these out-of-pocket expenses. Ms. Powell's defamatory statements were read or watched by a significant, world-wide audience base through publication and republication. The reaction by that audience base, as well as the reputational harm directly linked to the publications, was a substantial cause of these out-of-pocket expenses.

375. Moreover, Ms. Powell's defamatory statements were a substantial cause of Smartmatic's diminished business value and prospects. Prior to the 2020 U.S. election, Smartmatic's business value and prospects were linked to its reputation in the industry for providing technology and software that guaranteed secure, accurate and auditable elections. Individuals responsible for selecting voting systems in the United States and across the world understood they would not be second-guessed if they selected Smartmatic. They understood that selecting electronic voting and Smartmatic was a safe choice based on Smartmatic's track record for providing secure, accurate and auditable election results.

376. The defamation campaign discussed above was a direct assault on the reputation that Smartmatic relied upon for its business value and prospects. Ms. Powell branded Smartmatic as a corrupt company whose election technology and software were used to fix, rig, and steal elections. Far from providing secure, accurate and auditable election results, Ms. Powell branded

Smartmatic as a company whose technology and software meant elections were not secure, accurate or auditable.

377. Ms. Powell's branding of Smartmatic as a corrupt company substantially contributed to a "no win" situation for Smartmatic with individuals responsible for selecting voting systems, particularly in the United States. On the one hand, individuals who were not previously familiar with Smartmatic now have a negative impression of electronic voting systems, including those offered by Smartmatic. Those individuals are less likely to select electronic voting systems for their jurisdictions, and, even if they do, they are less likely to select Smartmatic. The publications discussed above contributed to that negative impression.

378. On the other hand, individuals who were familiar with Smartmatic prior to the publications discussed above have a constituency problem. Individuals familiar with Smartmatic understand its election technology and software ensure secure, accurate, and auditable election results. However, for some of them, their constituents have been exposed to, and believe, Ms. Powell's defamatory statements about Smartmatic, Dominion and election technology. As a result, their selection of electronic voting, generally, and Smartmatic, specifically, would be second-guessed by their constituents. These individuals are less likely to select electronic voting systems for their jurisdictions, and, even if they do, they are less likely to select Smartmatic. Ms. Powell's publications discussed above contributed to this constituency problem.

379. This "no win" situation has significantly diminished Smartmatic's business value and prospects. Prior to the 2020 U.S. election, based on its historical business and pipeline, Smartmatic's business was valued in excess of \$3.0 billion based on a modest multiplier.<sup>36</sup> Now,

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<sup>36</sup> Smartmatic's business pipeline includes sales and opportunities through subsidiaries wholly-owned by Smartmatic International Holding B.V. in the United States, Barbados, Australia, United Kingdom, Panama, Haiti, Belgium, Singapore, Netherlands, Mexico, Ecuador, Brazil,

following Ms. Powell's defamatory statements, Smartmatic's business is valued at less than \$1 billion. The general and widespread publication and distribution of Ms. Powell's and the Relevant Non-Parties' defamatory statements about Smartmatic were a substantial cause of a portion of this business valuation decline.

380. Smartmatic sent a retraction demand letter to Ms. Powell before filing this lawsuit. (12/15/20 Retraction Demand Letter to Sidney Powell (Exhibit 79)). Ms. Powell did not fully and complete retract her statements and implications.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

##### **(Defamation for False Statements and Implications that Smartmatic Participated in a Criminal Conspiracy to Fix, Rig, and Steal the 2020 U.S. Election)**

381. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

382. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic participated in a criminal conspiracy to fix, rig, and steal the 2020 U.S. election. These false statements are pleaded in paragraphs 132, 140, 149, 166, 182, and 191, which set forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

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

383. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

384. These statements and implications were false for the reasons stated in paragraphs 129, 135-138, 143-147, 152-156, 169-172, 185-189, and 194-199.

385. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

386. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

387. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statements also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

388. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

389. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

390. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

391. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

392. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

393. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

394. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

## **SECOND CAUSE OF ACTION**

### **(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Widely Used in the 2020 U.S. Election, Including in Contested States)**

395. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

396. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were widely used in the 2020 U.S. election including in contested states where claims of election fraud were made. These false statements are pleaded in paragraph 132, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when

taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

397. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

398. These statements and implications were false for the reasons stated in paragraphs 129, 135-138.

399. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

400. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

401. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statements also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

402. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

403. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

404. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

405. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

406. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

407. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

408. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

### **THIRD CAUSE OF ACTION**

#### **(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Used to Fix, Rig, and Steal the 2020 U.S. Election)**

409. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

410. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used to rig, fix and steal the 2020 U.S. election. These false statements are pleaded in paragraph 149, which sets forth the particular words and statements used in the

publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

411. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

412. These statements and implications were false for the reasons stated in paragraphs 129, 152-156.

413. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

414. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

415. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statements also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

416. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

417. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox

broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

418. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

419. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

420. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

421. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

422. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

#### **FOURTH CAUSE OF ACTION**

##### **(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Compromised and Hacked during the 2020 U.S. Election)**

423. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

424. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology

and software were compromised and hacked during the 2020 U.S. election. These false statements are pleaded in paragraph 166, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

425. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

426. These statements and implications were false for the reasons stated in paragraphs 129, 169-172.

427. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

428. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

429. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statements also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

430. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

431. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

432. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

433. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

434. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

435. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

436. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

#### **FIFTH CAUSE OF ACTION**

#### **(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Used by Dominion during the 2020 U.S. Election)**

437. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

438. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used by Dominion during the 2020 U.S. election for election fraud. These false statements are pleaded in paragraph 140, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

439. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

440. These statements and implications were false for the reasons stated in paragraphs 129, 143-147.

441. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

442. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

443. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statements also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

444. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

445. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

446. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

447. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

448. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

449. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

450. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

**SIXTH CAUSE OF ACTION**

**(Defamation for False Statements and Implications that Smartmatic was a Venezuelan Company Founded and Funded by Corrupt Dictators)**

451. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

452. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic was a Venezuelan company founded and funded by corrupt dictators. These false statements are pleaded in paragraph 182, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

453. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

454. These statements and implications were false for the reasons stated in paragraphs 129, 185-189.

455. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

456. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

457. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statements also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

458. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

459. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

460. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

461. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

462. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

463. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

464. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

**SEVENTH CAUSE OF ACTION**

**(Defamation for False Statements and Implications that Smartmatic's Election Technology and Software were Designed and Used to Fix, Rig, and Steal Elections)**

465. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

466. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology was designed and used to fix, rig, and steal elections. These false statements are pleaded in paragraph 191, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

467. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic.

468. These statements and implications were false for the reasons stated in paragraphs 129, 194-199.

469. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

470. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

471. These statements and implications were defamatory because they exposed Smartmatic to public hate, contempt, ridicule, and disgrace, and created the appearance that Smartmatic is odious and infamous. The statement also induced an evil and unsavory opinion of Smartmatic and its business into the minds of a substantial number of the community.

472. These statements and implications were defamatory *per se* since they charged Smartmatic with a serious crime and were of a nature tending to injure Smartmatic in its trade, business, and profession.

473. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

474. Ms. Powell also acted to deliberately and maliciously injure Smartmatic out of hatred, ill-will or spite, and/or for improper motives.

475. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her false and defamatory statements and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

476. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer irreparable harm to its reputation and suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

477. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

478. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

### **EIGHTH CAUSE OF ACTION**

#### **(Injurious Falsehood for False Statements and Implications that Smartmatic's Election Technology and Software were Widely Used in the 2020 U.S. Election, Including in Contested States)**

479. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

480. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were widely used in the 2020 U.S. election including in contested states where claims of election fraud were made. These false statements are pleaded in paragraph 132, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

481. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

482. These statements and implications were false for the reasons stated in paragraphs 129, 135-138.

483. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

484. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

485. These statements and implications were injurious falsehoods because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

486. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these injurious falsehoods and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

487. Ms. Powell also acted to deliberately and maliciously injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

488. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her injurious falsehoods and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

489. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

490. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

491. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

### **NINTH CAUSE OF ACTION**

#### **(Injurious Falsehood for False Statements and Implications that Smartmatic's Election Technology and Software were Used to Fix, Rig, and Steal the 2020 U.S. Election)**

492. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

493. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used to fix, rig and steal the 2020 U.S. election. These false statements are pleaded in paragraph 149, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

494. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

495. These statements and implications were false for the reasons stated in paragraphs 129, 152-156.

496. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

497. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

498. These statements and implications were injurious falsehoods because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

499. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these injurious falsehoods and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

500. Ms. Powell also acted to deliberately and maliciously injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

501. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her injurious falsehoods and implications in a comparable time, place, and

manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

502. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

503. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

504. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

#### **TENTH CAUSE OF ACTION**

##### **(Injurious Falsehood for False Statements and Implications that Smartmatic's Election Technology and Software were Compromised and Hacked during the 2020 U.S. Election)**

505. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

506. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were compromised and hacked during the 2020 U.S. election. These false statements are pleaded in paragraph 166, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each

publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

507. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

508. These statements and implications were false for the reasons stated in paragraphs 129, 169-172.

509. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

510. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

511. These statements and implications were injurious falsehoods because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

512. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these injurious falsehoods and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

513. Ms. Powell also acted to deliberately and maliciously injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

514. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her injurious falsehoods and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

515. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

516. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

517. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

#### **ELEVENTH CAUSE OF ACTION**

##### **(Injurious Falsehood for False Statements and Implications that Smartmatic's Election Technology and Software Were Used by Dominion during the 2020 U.S. Election)**

518. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

519. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were used by Dominion during the 2020 U.S. election for election fraud. These false statements are pleaded in paragraph 140, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by

presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (*See* ¶116.)

520. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

521. These statements and implications were false for the reasons stated in paragraphs 129, 143-147.

522. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

523. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

524. These statements and implications were injurious falsehoods because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

525. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these injurious falsehoods and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

526. Ms. Powell also acted to deliberately and maliciously injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

527. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her injurious falsehoods and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

528. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

529. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

530. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

#### **TWELFTH CAUSE OF ACTION**

##### **(Injurious Falsehood for False Statements and Implications that Smartmatic's Election Technology and Software were Designed and Used to Fix, Rig, and Steal Elections)**

531. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-380 of this Complaint as if fully stated herein.

532. On November 12, 2020, and continuing through December 20, 2020, Ms. Powell, Mr. Giuliani, and Fox published and/or republished false statements and implications during news broadcasts, in online reports, and on social media that Smartmatic's election technology and software were designed and used to fix, rig and steal elections. These false statements are pleaded in paragraph 191, which sets forth the particular words and statements used in the publications. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading

juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. (See ¶116.)

533. These false statements and implications were and would be reasonably understood to be statements of fact about Smartmatic's goods and services, and in particular about its election technology and software.

534. These statements and implications were false for the reasons stated in paragraphs 129, 194-199.

535. These statements and implications were published without privilege or legal authorization, and if there was any such privilege or authorization (and there was not) it was intentionally abused.

536. These statements and implications were broadcast, published and republished to third parties. The broadcasts, publications and republications with these false statements and implications were widely disseminated by Ms. Powell, Mr. Giuliani, and Fox.

537. These statements and implications were injurious falsehoods because they cast doubt upon the quality, integrity and trustworthiness of Smartmatic's goods and services, and in particular its election technology and software.

538. Ms. Powell acted with fault, at least negligence, and with actual malice. Ms. Powell knew these injurious falsehoods and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when Ms. Powell, Mr. Giuliani, and Fox broadcast, published, and republished them. The allegations related to Ms. Powell's actual malice include but are not limited to those pleaded in paragraphs 200-365.

539. Ms. Powell also acted to deliberately and maliciously injure Smartmatic and its goods and services out of hatred, ill-will or spite, and/or for improper motives.

540. Before filing this Complaint, Smartmatic provided notice to and demanded that Ms. Powell retract her injurious falsehoods and implications in a comparable time, place, and manner in which Ms. Powell, Mr. Giuliani, and Fox broadcast, published and republished them. Ms. Powell failed to do so.

541. These false statements and implications by Ms. Powell, Mr. Giuliani, and Fox were a substantial factor in causing Smartmatic to suffer loss, and Smartmatic is thus entitled to compensatory damages.

542. As a direct and proximate result of these false statements and implications by Ms. Powell, Mr. Giuliani, and Fox, Smartmatic has also suffered and will continue to suffer actual, consequential and special damages in an amount that will be determined at trial.

543. Smartmatic is also entitled to punitive damages because Ms. Powell acted with actual malice and ill-will and spite towards Smartmatic and for improper motives.

**PRAYER FOR RELIEF**

544. Wherefore, Smartmatic prays for judgment against Ms. Powell for each of the causes of action raised herein. Smartmatic respectfully requests a judgment in its favor and against Ms. Powell for:

- a. Compensatory damages in an amount to be determined at trial;
- b. Actual, consequential and special damages in an amount to be determined at trial;
- c. Punitive damages;
- d. Reasonable and necessary attorneys' fees;
- e. Reasonable and necessary costs of the suit;
- f. Prejudgment and post-judgment interest at the highest lawful rates;
- g. Declarative and injunctive relief; and
- h. Such other and further relief as this Court deems just and appropriate.

**JURY DEMAND**

Smartmatic requests a trial by jury on all matters raised herein.

Dated: November 3, 2021



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