

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SMARTMATIC USA CORP., SMARTMATIC
INTERNATIONAL HOLDING B.V., and SGO
CORPORATION LIMITED,
1001 Broken Sound Parkway, Suite D
Boca Raton, FL 33487,

Plaintiffs,

V.

HERRING NETWORKS, INC., d/b/a ONE
AMERICA NEWS NETWORK,
101 Constitution Ave., NW
Washington, DC 20001,

Defendant.

Case No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

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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 Herring Networks, Inc., d/b/a One America News Network (“OANN”).

INTRODUCTION¹

1. The first time it happened could be a mistake. The second, third, fourth and fiftieth times it happened were intentional choices. OANN had every opportunity to do the right thing after the 2020 election for President and Vice President of the United States. It could have reported the truth. Instead, OANN chose to do the wrong thing every time. It reported a lie.

2. OANN knew Joe Biden and Kamala Harris won the 2020 election for President and Vice President of the United States. OANN knew the election was not rigged, fixed, or stolen. OANN knew voting machines did not switch votes from former President Donald Trump to current President Joe Biden. OANN had every opportunity to provide its audience these facts. It chose to do the opposite.

3. Shortly after election night, as other news organizations informed their audience that Joe Biden and Kamala Harris had won the election, OANN told its audience that the election had been stolen and voting machines had switched votes cast for President Trump to President Biden. OANN knew it was not true. OANN had seen no evidence to support the assertion. But OANN chose to spread disinformation.

4. In the months and weeks that followed, as other news organizations reported that government officials and election experts were confirming the security and outcome of the

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

election, OANN told its audience that voting machines were compromised, and that the reported outcome could not be trusted. OANN knew its reporting was not true. OANN had seen no evidence to support its assertions. But OANN chose to spread disinformation.

5. During that same period, as other news organizations interviewed individuals with firsthand knowledge of the protocols ensuring the accuracy of the election results, OANN published interviews with individuals who did not have firsthand knowledge but who were willing to say that the election had been stolen and voting machines were to blame. OANN knew it was not true. OANN had seen no evidence to support the assertion. But OANN chose to spread disinformation.

6. Then, in December 2020, as other news organization publicly acknowledged that they had seen no evidence to support claims of election fraud or of voting machines switching votes, OANN mocked those news organizations and doubled down on its attacks on voting machines. OANN knew its assertions about Smartmatic were not true. OANN had seen no evidence to support the assertions. But OANN chose to spread disinformation.

7. Smartmatic provided election technology and services to Los Angeles County during the 2020 U.S. election. Its technology and software were used nowhere else in the country. And yet, OANN published report after report naming Smartmatic as one of the voting machine companies that had conspired to steal the election by switching votes from former President Trump to current President Biden. It was all a lie. And OANN knew it.

8. When it was founded, OANN told its audience that its objective was to provide fact-based, unbiased news. OANN told its audience that it would be their trusted source for facts, not rhetoric and spin. In its fight for ratings and viewers, OANN chose to ignore the promise it made to its audience. OANN chose to publish disinformation about Smartmatic and the 2020 U.S. election instead of fact-based, unbiased news.

9. OANN's choices have consequences. OANN's choices have damaged Smartmatic's reputation and brand by casting it as a corrupt company whose technology and software was used to steal election the 2020 U.S. election. OANN must be held accountable for its deliberate choice to spread disinformation.

PARTIES

10. Plaintiff Smartmatic USA Corp. is an election technology and software company. The company's principal place of business is in Boca Raton, Florida. It is incorporated in Delaware. During the 2020 U.S. Presidential 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 anywhere in the United States in the 2020 U.S. election. Even in Los Angeles County, the company played no part in the counting or tabulation of votes.

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

12. Plaintiff SGO Corporation Limited owns Smartmatic International Holding B.V. (100% ownership). The company's principal place of business is 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

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

2020 U.S. election outside of the technology and software provided by Smartmatic USA Corp. for Los Angeles County.

13. 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 OANN’s disinformation campaign that irreparably tarnished the Smartmatic brand (corporate and product) in the United States and throughout the world.

14. Defendant Herring Networks, Inc. d/b/a One America News Network (“OANN”) is a for-profit cable news channel.³ Herring Networks, Inc. was formerly known as Herring Broadcasting Company, Inc. until approximately January 22, 2014. OANN’s principal place of business is in San Diego, California, and Herring Networks, Inc. is incorporated in California. In addition to its California presence, OANN maintains a substantial operation in Washington, D.C. OANN has a Washington, D.C. news bureau and broadcasts out of its studio located at 101 Constitution Avenue NW, Washington, D.C. 20001. OANN’s “About” page states that OANN “has its primary production operations in California and Washington, DC.”

15. In addition to operating a cable news channel, OANN also operates its website, OANN.com, and company social media accounts, including Facebook (<https://www.facebook.com/OneAmericaNewsNetwork/>), Twitter (<https://twitter.com/OANN>), and Instagram (https://www.instagram.com/one_america_news/). OANN makes its content available on its website, on multiple digital platforms including YouTube and Rumble, and on the subscription streaming service, KlowdTV.

³ As used in the Complaint, references to OANN include its anchors, reporters, and producers working at the direction of OANN and within the scope of their employment with OANN.

16. OANN is available in 35 million homes through national cable providers and regional video providers. (OANN, *One America News Network Has Strong Ratings Going Into The 2020 Presidential Elections*, May 22, 2019 (Exhibit 139).) OANN’s cable news channel is available for purchase through multiple national providers, including AT&T U-verse, DirecTV, and Verizon FiOS.⁴ OANN is also available for purchase outside of the United States, including in Canada, Germany, and the United Kingdom. In March 2019, OANN claimed that Comscore data, a media analytics company, showed that OANN ranked as “the fourth-highest service” in the “Cable, News/Business/Info networks” genre. (*Id.*) According to the same data, OANN ranked behind only Fox News Channel, MSNBC, and CNN. (*Id.*)

JURISDICTION & VENUE

17. 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.

18. This Court has personal jurisdiction over OANN pursuant to § 13-423 of the District of Columbia Code because (1) OANN transacted business within the District of Columbia, including by maintaining and operating a news bureau in the District of Columbia; producing, reviewing, editing, and broadcasting programming from within the District of Columbia, including the programming featuring defamatory statements at issue in this case; employing D.C. resident reporters who made many of the defamatory statements in the District of Columbia; and offering services to, broadcasting to, and maintaining television and digital platform subscribers in the District of Columbia; (2) OANN caused tortious injury by acts committed within the District of Columbia, including and specifically by making false and defamatory statements about

⁴ See <https://www.oann.com/wheretowatch/>.

Smartmatic on broadcasts from and within the District of Columbia; and (3) OANN 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.

19. Requiring OANN 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 OANN made about Smartmatic from and within the District of Columbia. OANN avails itself of numerous privileges in the District of Columbia, including those set forth above.

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 OANN is subject to the Court's personal jurisdiction in this District.

FACTUAL ALLEGATIONS

21. Smartmatic is a victim of OANN's decision to increase its viewership and influence by spreading disinformation. As a news channel, OANN prides itself on providing viewers with "credible, honest, unbiased reporting." OANN and its journalists are legally and ethically bound to provide factually accurate information. OANN abused the trust placed in it by viewers and readers in the United States. OANN's disinformation campaign was not only a betrayal of its legal and ethical obligations, but also an action that caused irreparable damage to Smartmatic and contributed to an erosion of trust in the U.S. democratic process.

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 machines count the votes as they are made), electronic counting machines (voters vote with paper ballots that 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 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 are 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 in order 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 2,000 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 five 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 is 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 is 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. Redesignated 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. Redesignated Ballot Marking Device (“BMD”): The BMD replaces the County’s legacy InkaVote system. The BMD allows voters to customize their experience with both visual and audio access in thirteen languages. The BMD 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 voters 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 the 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 107).) 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

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 OANN.

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 Voting Systems (“Dominion”) and Election Systems & Software (“ES&S”). (Nevada Secretary of State, *Voting System Testing and Security List* (Exhibit 72).)
- b. Arizona used election technology supplied by multiple companies, including Dominion and ES&S. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 67).)
- c. Georgia used election technology supplied by Dominion. (8/9/19 Georgia Secretary of State, Dominion Voting Systems Certification (Exhibit 52).)
- 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 62).)
- e. Michigan used election technology supplied by Dominion, ES&S, and Hart InterCivic. (Michigan Voter Information Center, *Voting Systems Map* (Exhibit 58).)
- 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 69).)

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. OANN’s Disinformation Campaign Against Smartmatic

A. The 2020 U.S. election was secure, reliable, and accurate.

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.⁵

66. The security, reliability, and accuracy of the 2020 U.S. election were repeatedly and quickly 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

⁵ 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.

Nevada confirmed that the machines accurately tabulated the votes cast.”
(Facts v. Myths: Nevada 2020 Post-General Election (Exhibit 74).)

- 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.” (Tweet, @DougDucey, December 1, 2020 (Exhibit 68).)
- 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.” (11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 54).)
- d. Pennsylvania: Governor Tom Wolf reported: “Allegations of fraud and illegal activity have been repeatedly debunked. Pennsylvania had a free, fair, and secure election.” (Tweet, @GovernorTomWolf, November 12, 2020 (Exhibit 65).)
- 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.” (11/10/20 The New York Times, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 115).)
- 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.” (11/19/2020 Wisconsin Star

News, “*No evidence has been provided that supports allegations of systemic or widespread election issues*” (Exhibit 142).)

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 Committees* (Exhibit 119).) 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. On June 23, 2021, the Republican-led Michigan Senate Oversight Committee, chaired by Trump ally Senator Ed McBroom, released a 55-page report, which stated that “The Committee found no evidence of widespread or systemic fraud in Michigan’s prosecution of the 2020 election” and expressed total confidence that the state’s 2020 election outcome—that Biden defeated Trump by about 155,000 votes, or 2.8%—“represent[s] the true results of the ballots cast by the people of Michigan.” (6/23/21 Michigan Senate Oversight Committee, *Report on the November 2020 Election in Michigan* (Exhibit 152).)

72. On June 24, 2021, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, suspended Rudolph Giuliani from the practice of law after it determined that he had “made knowing **false and misleading factual statements** to support his claim that the presidential election was stolen from his client [Donald Trump],” based on “uncontroverted evidence” that he made such “demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.” (Order, *Matter of Giuliani*, 197 A.D.3d 1, 3 (1st Dep’t 2021) (Exhibit 153).)

73. On June 27, 2021, reporting revealed that Attorney General William Barr had “received two briefings from cybersecurity experts at the Department of Homeland Security and the FBI” about the allegations of rigged voting machines, after which he and his team at the Department of Justice “realized from the beginning it was just bullshit.” Barr further disclosed that “even if the machines somehow changed the count, it would show up when they were recounted by hand,” and that Dominion’s machines were just “counting machine[s], and they save everything that was counted. So you just reconcile the two. There had been no discrepancy reported anywhere, and I’m still not aware of any discrepancy.” (6/27/21 *The Atlantic*, *Inside William Barr’s Breakup with Trump* (Exhibit 154).)

74. On August 3, 2021, a federal judge in Colorado disciplined two lawyers who filed a frivolous lawsuit based on lies against Dominion following the election, concluding that the case was frivolous and brought in bad faith. In his 68-page opinion, Judge N. Reid Neureiter concluded: “Albeit disorganized and fantastical, the Complaint’s allegations are extraordinarily serious and, if accepted as true by large numbers of people, are the stuff of which violent insurrections are made.” (Order, *O’Rourke et al. v. Dominion Voting Systems, Inc. et al.*, No. 20-cv-3747 (D. Colo. Aug. 3, 2021) (Exhibit 155).)

75. On August 25, 2021, the United States District Court for the Eastern District of Michigan sanctioned Sidney Powell for filing a frivolous lawsuit against the Governor of Michigan, Gretchen Whitmer, related to the results of the 2020 U.S. election. The court found that Ms. Powell and the other “attorneys who filed the instant lawsuit abused the well-established rules applicable to the litigation process by proffering claims not backed by evidence (but instead, speculation, conjecture, and unwarranted suspicion); proffering factual allegations and claims without engaging in the required prefiling inquiry; and dragging out these proceedings even after

they acknowledged that it was too late to attain the relief sought.” (Opinion and Order, *King, et al., v. Whitmer, et al.*, No. 20-13134 (E.D. Mich. Aug. 25, 2021) (Exhibit 156).)

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

B. OANN promoted itself as a reliable source for fact-based news.

77. OANN was founded in 2013 by Robert Herring Sr. as a fact-based news channel. (5/8/20 CNN, *Meet OAN, the little-watched right-wing news channel that Trump keeps promoting* (Exhibit 140).) Charles Herring, Robert Herring Sr.’s son and President of Herring Networks, Inc., stated that prior to OANN’s founding it was “really hard to find just the reliable, credible, fact-based news with substance.” (*Id.*) The Herring family intended to fill that void with OANN. (7/5/17 *The Washington Post*, *An inside look at One America News, the insurgent TV network taking ‘pro-Trump’ to new heights* (Exhibit 138).)

78. Prior to launching OANN, the Herring family negotiated and executed a partnership between Herring Broadcasting (Herring Network’s former name) and *The Washington Times*. (5/30/13 Herring Broadcasting Press Release, *One America News Cable News Network Announces Debut in Collaboration with The Washington Times* (Exhibit 137).) Under the partnership, OANN relied on *The Washington Times* “as a key source of news and analysis from the nation’s capital.” (*Id.*) OANN also relied on *The Washington Times* to “provide real-time trusted reporting and credible analysis on the pressing issues of the day.” (*Id.*) OANN’s Washington, D.C. news bureau was initially located in *The Washington Times*’s newsroom, but around July 2014 moved to its current location in the District of Columbia. (6/6/14 Herring Broadcasting Press Release, *One America Cable News Network Relocates Washington, D.C. Bureau* (*Id.*)). At the time, Mr. Herring described the studio at 101 Constitution Avenue, NW as “a newsmaker’s dream.” (Herring

Broadcasting Press Release, *One America Cable News Network Announces Debut Collaboration with The Washington Times* (*Id.*.)

79. From its inception, OANN promised its viewers “straight news, no opinion.” (7/5/17 *The Washington Post*, *An inside look at One America News, the insurgent TV network taking ‘pro-Trump’ to new heights* (Exhibit 138).) It promoted itself as “the antidote” to other news channels’ focus on punditry and hyper focus on one big story of the moment. (*Id.*) OANN still makes the same promise to its viewers. A video on OANN’s “About” page on OANN.com states: “There is only one network you can trust to bring you real news. Straight-shooting, hard-hitting stories the mainstream media doesn’t want you to hear. Credible, honest, unbiased reporting from a source you can trust. One America News Network, your source for credible news.”

C. In the aftermath of the 2020 U.S. election, OANN promoted a preconceived story about Smartmatic in order to boost viewership.

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

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

82. By November 12, 2020, Mr. Giuliani and Ms. Powell began to appear on Fox News regularly. Fox News and its anchors gave them a platform to spread disinformation, added their endorsement, and provided their own disinformation. Pushing and disseminating disinformation about Smartmatic was good business for Fox News.

83. Fox News's success was a problem for OANN. In the immediate aftermath of the election, OANN had a once-in-a-lifetime opportunity to take viewers away from Fox News. Viewers were dissatisfied with Fox News's initial coverage of the election results and were looking for alternative cable news sources. OANN did not want to lose this chance to siphon viewers from its main competition. So OANN decided to cover Mr. Giuliani and Ms. Powell's demonstrably false claims about widespread fraud in the 2020 U.S. election. OANN did not merely cover Mr. Giuliani and Ms. Powell's claims, OANN endorsed their claims and made its own demonstrably false claims about Smartmatic.

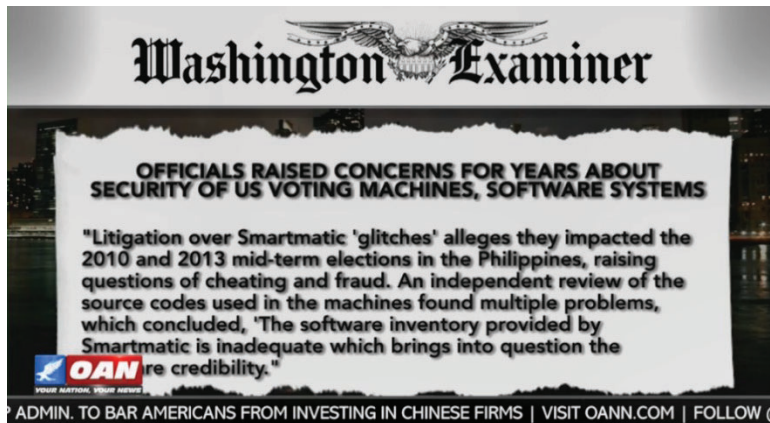
84. On November 12, 2020, Alex Salvi hosted *After Hours with Alex Salvi*. (*After Hours*, November 12, 2020 (Exhibit 1); Screenshots, *After Hours*, November 12, 2020 (Exhibit 1A).) This was the first time OANN informed its viewers of its disinformation campaign and the false claims about Smartmatic. Mr. Salvi discussed the Trump campaign "utilizing recounts, lawsuits, and allegations of voter fraud to keep the re-election efforts alive."



85. Mr. Salvi informed viewers that the New York Times reported that claims of “software glitches” involving Dominion machines in Michigan and Georgia are “baseless.” If only he had stopped there. Instead of accurately informing OANN’s viewers that there was no evidence of “software glitches,” Mr. Salvi told his viewers not to listen to the New York Times.

Mr. Salvi: But the sign of confidence from The New York Times, it may help some of you sleep at night, but it also ignores years worth of alarms being raised about these systems. Professor Andrew Appel, a computer scientist at Princeton University, has been raising the alarms about Dominion Voting Systems for years. In fact, back in 2008, he was asked to hack into one of those machines as part of an election lawsuit against officials in the state of New Jersey.

Mr. Salvi: I understand a lot has changed since 2008. But the allegations against Dominion Voting did not stop then. *The Washington Examiner reporting this week quote, “the Dominion Voting Systems, which has been used in multiple states where fraud has been alleged in the 2020 US election, was rejected three times by data communications experts from the Texas Secretary of State and Attorney General’s Office for failing to meet basic security standards.” But it’s not only Dominion. It’s also Dominion’s subsidiaries, such as Smartmatic which was used for the Philippine elections back in 2010 and 2013.* The Washington Examiner reporting quote, “litigation over Smartmatic glitches alleges they impacted the 2010 and 2013 midterm elections in the Philippines, raising questions of cheating and fraud. An independent review of the source codes used in the machines found multiple problems, which concluded the software inventory provided by Smartmatic is inadequate, which brings into question the software credibility.” So when you understand all of this, you begin to realize why Republicans were concerned when they learned this happened in Michigan.



86. With that, OANN's disinformation campaign had begun. Over the next two months—and beyond—OANN embarked on a disinformation campaign to convince viewers and readers that Smartmatic had rigged the 2020 U.S. election in favor of Joe Biden and Kamala Harris. OANN spread this false story through morning and evening newsroom briefings, evening news programs, and material posted to its website and social media. OANN also invited numerous guests on its programming to spread and corroborate the false story.

87. On November 16, 2020, OANN's disinformation campaign began in earnest. During the 5AM⁶ hour of OANN's *News Room*, Reporter Elma Aksalic discussed Ms. Powell's claims that "overwhelming evidence of voter fraud is coming to light." (*News Room*, 5AM, November 16, 2020 (Exhibit 2); Screenshots, *News Room*, 5AM, November 16, 2020 (Exhibit 2A).) Ms. Aksalic broadcasts out of OANN's Washington, D.C. news bureau, and this segment was filmed in the Washington, D.C. bureau. On information and belief, the segment was researched and produced in OANN's Washington, D.C. news bureau.



88. OANN knew that it had not seen any evidence supporting Ms. Powell's claims of "overwhelming evidence of voter fraud" and that Ms. Powell had not presented any evidence supporting her claims. Nonetheless, OANN republished portions of an interview Ms. Powell did

⁶ All times referenced are Eastern Standard Time. All times pleaded are approximate and based upon Smartmatic's current knowledge.

on *America This Week* with Eric Bolling on or around November 15, 2020. Ms. Aksalic informed viewers that Sidney Powell was “President Trump’s campaign attorney.”

Ms. Aksalic: During an interview on Sunday, attorney Sidney Powell said election results in multiple states are quote, “getting ready to overturn.” Powell cites an overwhelming amount of evidence the President’s legal team has received concerning voter fraud and irregularities. Powell goes on to claim she has enough evidence, some even dating back to 2016, to launch a widespread criminal investigation. ***She specifically noted a member of Joe Biden’s team is also on the board of directors for a software company behind the flawed Dominion Voting Systems.***

Ms. Powell: They’re facing an election that was absolutely rigged. [W]e are soaking in information through fire hoses of complicated mathematical alterations to the votes. We have identified the system capability that does it. It does in fact exist regardless of what the name of it is. It works through the Dominion company’s voting machines that were in 30 states and does indeed alter and flip voting results.

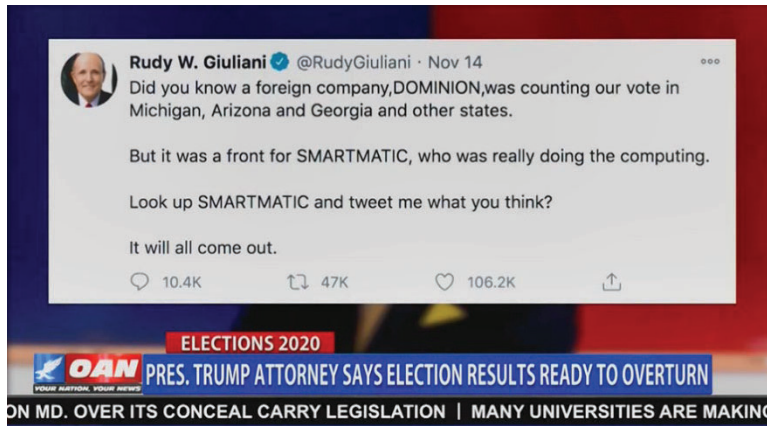
89. Ms. Aksalic immediately informed viewers that Ms. Powell was discussing Smartmatic software. To avoid any confusion, OANN put a graphic of Smartmatic’s logo on the screen.



Ms. Aksalic: Powell says the software dubbed *Smartmatic* was designed for the sole purpose of shifting voting results.

Ms. Powell: It’s a feature of the system that was designed with a backdoor so that people could watch in real time and calculate with an algorithm how many votes they needed to change to make the result they wanted to create.

90. OANN next displayed a November 14, 2020 tweet by “the President’s personal attorney, Rudy Giuliani.”



Mr. Giuliani wrote: “Did you know a foreign company, DOMINION, was counting our vote in Michigan, Arizona and Georgia and other states. But it was a front for SMARTMATIC, who was really doing the computing. Look up SMARTMATIC and tweet me what you think? It will all come out.” At that time, OANN knew that Mr. Giuliani had not presented any evidence that Dominion is “a front” for Smartmatic or that Smartmatic was counting votes in those states. OANN also knew that it had not seen any evidence to support those claims.

91. Ms. Aksalic closed the segment by promising viewers “Powell hopes to reveal all pertaining affidavits and evidence of fraud before the election certification deadline.” Ms. Aksalic, and others at OANN, knew that Ms. Powell did not have any evidence of fraud.

92. Later that day, anchor Kara McKinney joined the disinformation campaign on *Tipping Point with Kara McKinney*. (*Tipping Point*, November 16, 2020 (First Video) (Exhibit 3); Screenshots, *Tipping Point*, November 16, 2020 (First Video) (Exhibit 3A).)



At the time of her broadcast, Ms. McKinney had not seen any evidence indicating that the 2020 U.S. election had been stolen, much less stolen by Smartmatic. Nonetheless, Ms. McKinney joined the disinformation campaign and told her viewers that President Trump's election fight was still viable.

Ms. McKinney: [I]t's absolutely critical that we stop the steal so President Trump can continue dismantling these corrupt powers in the nation's capitol for another four years. There's something we really need to draw upon right now. And that's called the American spirit. The spirit of independence, that mocks those who hold themselves up as our social betters. Especially when they come in the form of the low lives over at CNN or Democrats telling us that the fight is over and Biden won. That's a lie. The electors haven't met yet, and the President has some strong legal challenges still pending. It's also a convenient lie. ***Given that Trump attorney Sidney Powell says a member of Biden's transition team is also a member of the board of directors for Smartmatic, which is a subsidiary of Dominion, small world I guess. Powell claims to have evidence that proves the software was designed to rig elections.***

93. In the next segment, Ms. McKinney invited Michael Johns, Co-Founder and Leader of the National Tea Party Movement, to spread additional falsehoods about Smartmatic. (*Tipping*

Point, November 16, 2020 (Second Video) (Exhibit 4); Screenshots, *Tipping Point*, November 16, 2020 (Second Video) (Exhibit 4A).)



During this segment, Ms. McKinney introduced another aspect to the disinformation campaign—Smartmatic’s alleged ties to foreign governments.

Ms. McKinney: Foreign governments seem to be tied in with these systems, whether it be Canada, Venezuela, Spain, or even Germany. What can you tell us about that?

Mr. Johns: [T]here’s been some reporting in some of these systems in Germany were actually seized. [] Smartmatic has had incredible ties with some of the greater far left concerns that we have, including this Lord Mark Malloch-Brown, who’s very tight with Soros, is on the Open Society’s Global Board and a bunch of other Soros boards, meaning this is not some casual associate of George Soros. This is kind of an individual is part of that inner circle. And we have case after case[.] Philippines is another great example where these systems have been utilized and there’s been nothing but broad concerns. Now, since we last talked, which was not broadly known and still not broadly known, *just so happens that one of the two campaigns has a very strong relationship with Smartmatic* and I probably don’t have to ask you to guess which one. But we have an individual named Peter Neffenger, who has been handling what’s typically called the landing teams for transitions. Where personnel are brought in for the nothing short of the Department of Homeland Security. This guy has been on the board of Smartmatic.

94. Ms. McKinney and OANN knew that there was no evidence supporting Mr. Johns’ implication that Smartmatic rigged the 2020 U.S. election for Joe Biden. But Ms. McKinney did

nothing to stop Mr. Johns from spreading this false implication about Smartmatic. Instead, she endorsed his statements.

Ms. McKinney: You're exactly right. [] [T]his smacks to me of intention here on the Democrats' part, [] laying out over these past few years, red flags popping up here and there over these many, many years. ***And the fact that Democrats knew that and then pushed to bring these systems into as many as 30 states[.]***

95. OANN's disinformation campaign continued during the 11PM hour of the *News Room*. (*News Room*, 11PM, November 16, 2020 (Exhibit 5); Screenshots, *News Room*, 11PM, November 16, 2020 (Exhibit 5A).)



During this show, OANN republished portions of Mr. Giuliani's podcast, *Common Sense*, published on or around November 13, and reporter Mike Dinow gave additional commentary.

Mr. Giuliani: Not terribly different than what's going on in Venezuela. And very interestingly, [you're] gonna see that Venezuela is involved in this voter fraud.

Mr. Dinow: ***Report suggests voting machines systems funded by George Soros were used to install a socialist regime in Venezuela back in the early 2000s.*** According to WikiLeaks, UK based companies Smartmatic had a campaign staffer for Hugo Chávez on its board back in 2000. ***Now the company reportedly meddled with a 2004 Venezuela election to secure a win for the Chávez regime.*** The Gateway Pundit reports, Smartmatic sold its technology to Dominion Voting, that ran elections in Arizona, Michigan, Nevada, and Pennsylvania this year.

96. During Mr. Dinow's statements, OANN put up an on-screen graphic stating "Report: Soros-Backed Firm Installed Socialism in Venezuela; Dominion-Linked Smartmatic Had Chavez Aide on Board, Sold Rigged Election Tech to U.S. States." OANN put up this graphic even though it had no evidence to support these assertions.



97. OANN then republished another portion of Mr. Giuliani's podcast.

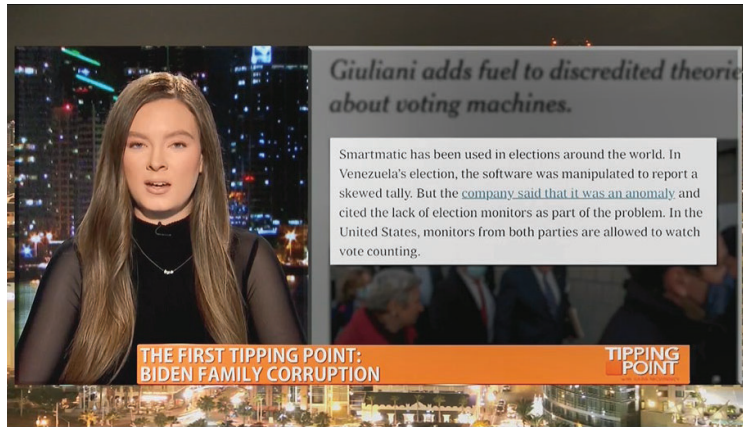
Mr. Giuliani: They certainly stole the election in Detroit. They certainly stole the election in Pennsylvania. There were over 100 witnesses to that. And you're gonna see the same thing is true in five other places. And then we're going to take a look at Dominion, and we'll show you how technologically they stole the election.

Mr. Dinow: The Gateway Pundit report also says Smartmatic is partially owned by the Maduro regime and George Soros. In the meantime, Rudy Giuliani also suggests its partner Dominion has been corrupted by the Clinton Foundation.

98. Again, during Mr. Dinow's statements, OANN displayed the same on-screen graphic falsely accusing Smartmatic of having connections to corrupt dictators, of having previously rigged an election in Venezuela, and of being widely used in the 2020 U.S. election. OANN had seen no evidence to support these claims because they are all factually inaccurate.

99. On November 17, 2020, Ms. McKinney returned to the disinformation campaign on *Tipping Point with Kara McKinney*. (*Tipping Point*, November 17, 2020 (Exhibit 6); Screenshots, *Tipping Point*, November 17, 2020 (Exhibit 6A).) Ms. McKinney opened her show by repeating the primary themes of the disinformation campaign: Smartmatic was widely used in

the 2020 U.S. election, including in Dominion machines; Smartmatic rigged the 2020 U.S. election in favor of Joe Biden; and Smartmatic's software was compromised during the 2020 U.S. election while votes were sent to foreign countries.



Ms. McKinney: The even bigger issue at play here [is] systemic. For example, the voting system used in around 30 states, Dominion, and its subsidiary Smartmatic. It just so happens that a member of Biden's transition team, Peter Neffenger, is a member of the Board of Directors for Smartmatic. The chairman of that company is also a board member for George Soros' Open Society Foundation. That very same software was used a few years back to rig elections in Venezuela.

Ms. McKinney: So this begs the question, why are we using foreign companies to count our votes in the first place, and allowing that information to reportedly flow through servers overseas? And secondly, if even Democrats knew about these vulnerabilities with Dominion and Smartmatic years before this election, then why did they allow them to be used in so many states? Why didn't more states follow in the lead of Texas in saying no? Perhaps that means they were chosen by election officials precisely because they are so flawed.

100. Ms. McKinney then transitioned to an interview with Tom Fitton, the President of Judicial Watch. During the interview, Mr. Fitton stated that "the Smartmatic system[,] . . . the company was set up by buddies of Hugo Chavez." Mr. Fitton had no support for that assertion and Ms. McKinney, and OANN, knew that Mr. Fitton had no support for his statement. Ms. McKinney nevertheless did not challenge Mr. Fitton's statement.

101. On November 19, 2020, the disinformation campaign continued during OANN's primetime programming. First up was Patrick Hussion on *Breaking News Live with Patrick Hussion* at 7PM. (*Breaking News Live*, November 19, 2020 (Exhibit 9); Screenshots, *Breaking News Live*, November 19, 2020 (Exhibit 9A).)



During this program, OANN republished clips of a press conference held by Mr. Giuliani and Ms. Powell in Washington, D.C. earlier that day. Mr. Hussion added his own commentary to the clips.

Mr. Giuliani: The company counting our vote, with control over our vote, is owned by two Venezuelans who are allies of Chávez.

Mr. Hussion: Rudy Giuliani says the Democrat Party conspired with socialist regimes overseas to steal this year's election from the President. In a news conference, the President's legal team said that they have evidence that Dominion Voting Systems and the Smartmatic software were used to switch votes from President Trump to Joe Biden. They add the technology is controlled by allies of Venezuela's Maduro regime.

102. During this news package, OANN displayed an on-screen graphic that stated, “Giuliani: Dems & Venezuela Used Dominion Software to Steal Election; Say Dominion’s Smartmatic Technology Co-Owned by Maduro Regime Allies, Soros Involved as Well.”



103. At the time of Mr. Hussion’s show, OANN knew both that it had not seen any evidence supporting what Mr. Giuliani said and that Mr. Giuliani had not presented any evidence supporting what he said. Nonetheless, OANN rebroadcast Mr. Giuliani’s demonstrably false statements and added to Mr. Giuliani’s false statements.

104. Next up, at 8PM, was OANN anchor Dan Ball. (*Real America*, November 19, 2020 (Exhibit 10); Screenshots, *Real America*, November 19, 2020 (Exhibit 10A).) Mr. Ball interviewed Evi Kokalari-Angelakis and introduced her as someone “familiar with communism and socialism and how it works and doesn’t work versus capitalism.” Mr. Ball also stated that Ms. Kokalari-

Angelakis had special knowledge of the “election fraud” issue, stating “You’re familiar with a little company called Dominion software, which is at the forefront of this election fraud.”



Mr. Ball asked Ms. Kokalari-Angelakis to explain “how [she] know[s] that Dominion has been involved in some other corrupt elections overseas in the past.” Ms. Kokalari-Angelakis went on to share her “knowledge” about Dominion and Smartmatic.

Ms. Kokalari-Angelakis: [T]hey have been around since 2004, at least in Serbia. Dominion and the Clinton Foundation, they have a project together called the Delian Project, which apparently raises money to help voter fairness in countries like, I don’t know, maybe Albania or countries that are not—don’t have a strong economy or they’re not too strong. Meanwhile, they are doing the opposite, so, you know, when you see weak states like those, this is the perfect playground for George Soros because, believe it or not, George Soros’ son is constantly in Albania. Albanians are friends of Hillary Clinton and the Clinton Foundation, but, remember this: in 2016, right before the election in 2016, Hillary Clinton was so sure she was going to win. ***The only reason she was sure she was gonna win, is because they knew Dominion and the software, Smartech–Smartmatic was in existence, and that’s how they were going to get the election.*** They just didn’t expect—they didn’t realize how many Americans were going to vote for Donald Trump, and that’s how they probably lost that election.

Mr. Ball: Yeah, what we’ve seen from the information coming out, and we heard a little bit from Rudy Giuliani today, ***is that obviously these security folks at Dominion that set up the systems in the individual states, they can just do a little tweak here, a little tweak there to the program. It can make it so minor to flip votes, but enough to make your guy win that hopefully it’s not noticeable.*** And to your point in ‘16, I’ve seen this in several articles, they didn’t tweak it quite enough. They didn’t expect that many millions of people to vote for [] President Donald J. Trump.

Ms. Kokalari-Angelakis: Exactly.

105. Mr. Ball ended his discussion with Ms. Kokalari-Angelakis by thanking her for appearing on his show. Mr. Ball also promised viewers that “One America [News] will continue to look into the Soros connection but, again, we do know there are ties directly to the Clinton Foundation and other Democrats with this Dominion Software Company and their hierarchy that run it.” OANN falsely equated Smartmatic to the “Dominion Software Company” by telling people, falsely, that Dominion machines use Smartmatic software. OANN knew it had seen no evidence that Dominion used Smartmatic because that claim is factually inaccurate.

106. On November 20, 2020, OANN continued its disinformation campaign all day. During the 12AM hour of OANN’s *News Room*, OANN broadcasted a news package that included rebroadcasted clips of Mr. Giuliani and Ms. Powell’s November 19, 2020 press conference that took place in the District of Columbia, and commentary by an unseen OANN reporter. (*News Room*, 12AM, November 20, 2020 (Exhibit 14); Screenshots, *News Room*, 12AM, November 20, 2020 (Exhibit 14A).)

OANN Reporter: The President’s lawyers are weighing in once again on election fraud during the 2020 White House race. In DC Thursday, ***they claimed votes were hacked and ballots were switched from President Trump to Joe Biden through technology developed in Venezuela. President Trump’s personal lawyer Rudy Giuliani says the company funding the technology has close ties to known communist leaders.***

Mr. Giuliani: The company counting our vote, with control over our vote, is owned by two Venezuelans who are allies of Chávez, are present allies of Maduro, with a company whose chairman is a close associate and business partner of George Soros.

OANN Reporter: Giuliani has recently also said several whistleblowers have come forward to testify about so-called glitches in election software. And Thursday, he said hundreds more have signed up affidavits detailing incidents with voting systems.

OANN Reporter: *Most claims center around the Canadian-made Dominion Voting Systems and the Venezuelan-made Smartmatic Systems.* Sidney Powell says the same technology was used to secure a victory for Hugo Chávez in Venezuela and could have been used across the country.

Ms. Powell: [O]ne of its most characteristic features its, 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.

107. During this news package, OANN included an on-screen graphic that stated, “President’s Lawyers Claim Communist-Funded Election Software Responsible for Alleged Voting Irregularities.” OANN had already explained (falsely) to its audience that Smartmatic was the “communist-funded election software company.”



108. Prior to broadcasting this news package, OANN knew it had not seen any evidence that: Smartmatic was widely used in the 2020 U.S. election; Smartmatic rigged the 2020 U.S. election for Joe Biden; Smartmatic has ties to corrupt Venezuelan dictators; or Smartmatic previously rigged elections in Venezuela. OANN also knew that Mr. Giuliani and Ms. Powell had not provided any evidence corroborating their claims.

109. During the 6AM hour of OANN's *News Room*, OANN broadcast an interview with Keith Trippie. (*News Room*, 6AM, November 20, 2020 (Exhibit 15); Screenshots, *News Room*, 6AM, November 20, 2020 (Exhibit 15A).)



Mr. Trippie is a consultant and an author. Mr. Trippie added to the disinformation campaign by implying that Smartmatic's technology and software is capable of rigging elections.

Mr. Trippie: One of the things I'd love to see Sidney [Powell] and Rudy [Giuliani] do is, they need to talk to both over at Dominion and over at Smartmatic. Who were the product managers, who were the lead engineers, who were the lead developers and who were the lead testers? Those are all people directly involved in what software features are made available and testing those features before they're out. One of the things I would want to know is, can you change a vote? Whether it's inside the company on the software or out at a state location where these machines are.

110. The disinformation campaign continued during the 3PM hour of the *News Room*. (*News Room*, 3PM, November 20, 2020 (Exhibit 16); Screenshots, *News Room*, 3PM, November 20, 2020 (Exhibit 16A).) OANN broadcast reporter John Hines interviewing Allan Santos, a Brazilian journalist. Mr. Hines is an OANN reporter based in Washington, D.C. He broadcasts out of OANN's Washington, D.C. news bureau. The interview was filmed in OANN's Washington,

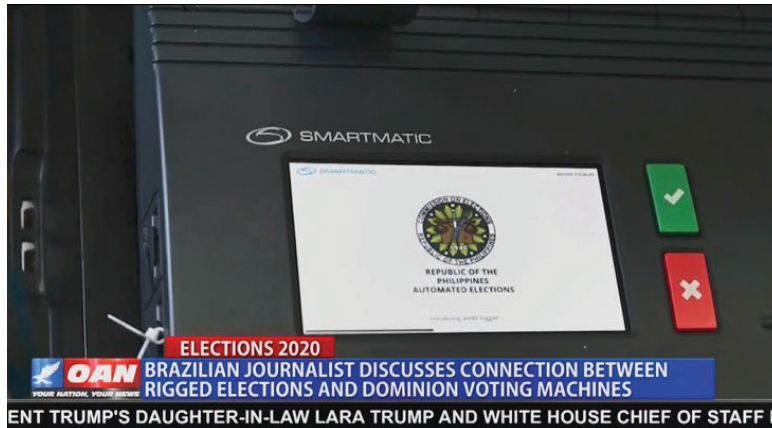
D.C. news bureau. On information and belief, the interview was researched and produced in OANN's Washington, D.C. news bureau.



111. A OANN reporter introduced Mr. Santos as “a reporter who has first-hand knowledge of the problems with Dominion Voting Machines.” Mr. Hines then stated that Mr. Santos has “come across some evidence that has bearing on the counting in our U.S. elections.” Mr. Santos went on to explain his “evidence.”

Mr. Santos: So, in my experience in South America, we are following lots of election fraud as the recent one in Bolivia. *And due to that we follow the Smartmatic company, who is a company that count votes.* It’s like a voter machine used to have in Venezuela, Brazil, Bolivia, Argentina, and so forth. And we have lots of news in Brazil, even the outlet media, slamming the Smartmatic company and the Smartmatic company owner is the Lord Mark Malloch Brown, who’s also a board member of the Open Society Foundation. And one thing is it’s weird, it’s when you open the Smartmatic official website says they started in Florida, back 2000. But the problem is we have story in Brazil, Brazilian BBC version, Portuguese saying the Smartmatic is started in Venezuela, not in Florida. And not only this, the Smartmatic company also used to work with Dominion, the company system that you are using here. But it’s weird how they operate, because it’s the same pattern. *In Brazil back 2014, and also back 2018, one candidate was leading, and then it stopped counting. And after an hour or after 40 minutes, something like*

that, everything changed. And I saw that here. And I can assure you communists love fraud election. They love to do fraud[.]



112. Mr. Hines and Mr. Santos then focused on Smartmatic's alleged connection to Dominion.

Mr. Hines: So what is the connection between the Smartmatic machines and the Dominion machines do you suppose?

Mr. Santos: So they have a contract for using softwares. And you can follow these on law.ucea.com. And you can see how they operate together here in America. So it's there in the website.

Mr. Hines: *So the connection has to do with the software that both of these companies use, these vote counting services. Is that it?*

Mr. Santos: *Yes.*

113. At 6PM, anchor Stephanie Hamill joined the disinformation campaign on *In Focus with Stephanie Hamill*. (*In Focus*, November 20, 2020 (Exhibit 17); Screenshots, *In Focus*, November 20, 2020 (Exhibit 17A).) Ms. Hamill began her show by broadcasting clips from the November 19 press conference given by Mr. Giuliani and Ms. Powell, which took place in the District of Columbia. She summarized Mr. Giuliani and Ms. Powell's allegations.

Ms. Hamill: President Trump's personal attorney alleges a national conspiracy by Democrats to steal the 2020 election . . . Giuliani is not alone in his assertions of widespread voter fraud. *Attorney Sidney Powell says the software used in the voting machines across the country can be manipulated to alter vote totals.* Now Powell also points out that the software

developed by Smartmatic is tied to major democrat donor George Soros and the Clinton Foundation.

114. Ms. Hamill then introduced her guest, Joseph diGenova. Mr. diGenova was introduced as a “lawyer, political commentator, and former U.S. Attorney for the District of Columbia.” Ms. Hamill also stated that Mr. diGenova is “part of President Trump’s legal team.” Ms. Hamill asked Mr. diGenova to discuss the November 19 press conference, which took place in the District of Columbia, and Mr. Giuliani and Ms. Powell’s allegations.



Ms. Hamill: [W]hat really stood out to me in the press conference yesterday was Sidney Powell talking about the *voting machines suggesting that our votes are being counted overseas, that Dominion Voting Machines and Smartmatic use software that are controlled by foreign interests*. If you could expand on that.

Mr. diGenova: I noticed that Dominion Software and its other entities issued a statement today saying they’re not controlled by foreign entities, etc, etc. They never denied that the votes are actually counted in computers in Frankfurt, Germany, and Barcelona, Spain. Ask yourself this question: Why would any state hire a company, which is going to have its vote tallies done in Frankfurt, Germany, and Barcelona, Spain, where the tallying cannot be monitored by any American citizen during the process, and where tabulations could be altered without the knowledge of anybody? *Because these computer systems have a backdoor so that they can be hacked*. My answer to Dominion is, allow all of your computers to be subject to a forensic audit immediately. Let’s see if they agree to that.

115. While Ms. Hamill and Mr. diGenova discussed Smartmatic, OANN displayed a graphic stating “Trump Attorney Sidney Powell: Voting Software ‘Designed to Rig Elections.’” OANN falsely made Smartmatic synonymous with the “Voting Software” at issue.



116. Ms. Hamill ended her interview with Mr. diGenova by thanking him and imploring him to “keep fighting the good fight.”

117. At the time of these shows, OANN had not seen any evidence showing that: Smartmatic was widely used in the 2020 U.S. election, including in Dominion machines; Smartmatic rigged the 2020 U.S. election in favor of Joe Biden; or Smartmatic’s software was compromised during the 2020 U.S. election while votes were sent to foreign countries. And OANN knew that none of its guests, Ms. Powell, or Mr. Giuliani had produced any evidence corroborating their claims about Smartmatic. That did not stop OANN because it was working to spread disinformation and was picking clips and guests that allowed it to do so.

118. On November 22, 2020, Ms. McKinney once again joined the disinformation campaign on *Tipping Point with Kara McKinney*. (*Tipping Point*, November 22, 2020 (Exhibit 18); Screenshots, *Tipping Point*, November 22, 2020 (Exhibit 18A).) Ms. McKinney was joined by a new guest, Kyle Becker. Mr. Becker is a former associate producer at Fox News. By now, the

themes of the disinformation campaign were familiar; Ms. McKinney and Mr. Becker added to the rampant disinformation.



Ms. McKinney: It [] blows my mind that [] years and years of Russia this, Russia that, foreign interference and foreign hacking and meddling in our elections, and then here all these bids go out to foreign-based companies. You know, Dominion [] it's a Canadian company. We hear about some servers possibly overseas, that at some of this data is being routed through, [] you know what's going on there? It's so confusing.

Mr. Becker: It is confusing because [] there are foreign companies that have stations in the United States . . . SGO Smartmatic has been involved in this and they're from London, they have ties to Venezuela, they've been participating in Venezuela. There are ties to [] Germany, [] election reporting servers going through [] there. All of this is being denied, but there's absolutely zero transparency. These source codes that are used in these [] voting machines are secret and proprietary [.]

119. OANN's disinformation campaign continued on the 6PM hour of the *News Room* on November 22. (*News Room*, 6PM, November 22, 2020 (Exhibit 19); Screenshots, *News Room*, 6PM, November 22, 2020 (Exhibit 19A).) Reporter Samantha Lomibao discussed Smartmatic's

alleged role in rigging the 2020 U.S. election. The segment included clips from Mr. Giuliani's visual podcast, *Common Sense*, published on or around November 18, 2020.



Ms. Lomibao: In a recent statement the [Organization of American States (OAS)] said the international community must not recognize Venezuelan elections, adding the Maduro regime will manipulate the outcome of the vote. The organization says Maduro officials seek to cement their impunity and cooptation of state powers. This after reports found Maduro allies were meddling in the latest US election through a company called Smartmatic.

Mr. Giuliani: *Smartmatic, which is the ultimate software, had switched 6,000 votes. It switched 6,000 votes from Trump to Biden.* So the poor people in Michigan that went in to vote for Trump ended up voting for Biden because the machine and the software that originates you know, with Venezuela, a dictatorship, changed their vote without their ever knowing it.

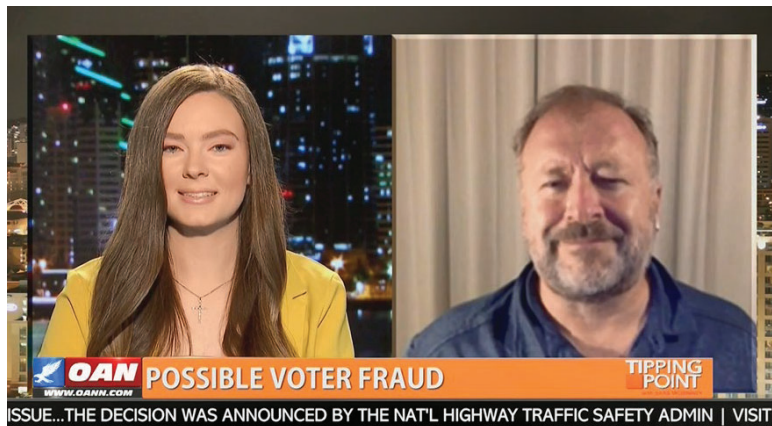
Ms. Lomibao: The OAS says any election that involves Maduro officials is a sham and must be not recognized by any civilized country.

120. Throughout the segment, OANN put up an on-screen graphic that stated “OAS: Upcoming Venezuela Elex A Sham, Must Not Be Recognized; Says Maduro Regime Seeks to Co-Opt State Power Amid Concerns of Smartmatic Meddling in U.S. Elex.” OANN used this graphic even though it knew the OAS was not referring to Smartmatic because Smartmatic stopped working on elections in Venezuela in 2017.

121. At the time of the report, OANN had not seen any evidence that Smartmatic software switched any votes. OANN also knew that Mr. Giuliani had not produced any evidence supporting his claim that Smartmatic switched votes. This did not stop OANN. OANN wanted to

spread disinformation about Smartmatic and played clips that supported its disinformation campaign.

122. On November 23, 2020, OANN's disinformation campaign continued on *Tipping Point with Kara McKinney*. (*Tipping Point*, November 23, 2020 (Exhibit 20); Screenshots, *Tipping Point*, November 23, 2020 (Exhibit 20A).) Ms. McKinney brought on another guest, J. Michael Waller, to discuss Smartmatic's alleged ties to corrupt Venezuelan dictators. Mr. Waller was introduced as a "Senior Analyst for Strategy at the Center for Security Policy."



Ms. McKinney: [S]o when it comes to this affidavit from the former Venezuelan bodyguard, what stood out to you the most?

Mr. Waller: What stood out is we have an eyewitness account of an individual who was a trusted confidant of the then Cuban and Russian backed dictator of Venezuela, who personally designed the parameters of a software [] whose whole purpose was to manipulate votes to ensure he would win an election. This is crucial because its not just a foreign Banana Republic dictator, ***this is someone who's backed by [] Cuban intelligence Secret Service around him and Russian secret police around him, who's designing this material that American voting tabulation companies use.***

Ms. McKinney: And would it be accurate to describe ***Smartmatic as a shell company?*** That there's a lot of payers—a lot of the waters here are muddy so you can't necessarily get back to who owns what? Would that be correct?

Mr. Waller: Right, yes, we do know it's owned by two Venezuelan nationals who were allied with the Venezuelan dictatorship. We know that much, but the company is hiding who else owns them, and there's no transparency at all. Yet our own voting officials think it's just fine.

123. Ms. McKinney then asked about to Smartmatic's relationship with Dominion.

Ms. McKinney: And then it just comes down to this idea of Smartmatic and Dominion—I know they’re trying to distance from each other. For example, Dominion says ‘we’re competitors in the marketplace, we have no ties whatsoever.’ You go back to old interviews, for example, of the former chairman for Smartmatic [] in the Philippines, he was being interviewed and he says ‘that they work together with software and share some details there.’ So what is the exact relationship between the two?

Mr. Waller: Well, it’s still really unclear, but we do know that from the evidence presented so far from this [] one affidavit that we’ve already seen that ***the current software for any Smartmatic compatible machine, the DNA is based on this [] Smartmatic material designed in Venezuela.*** So that’s the [] backbone of the software for any Dominion or other machine in the United States.

Ms. McKinney: We’ve spent the last four years crying about Russia and, you know, foreign interference in our elections. Here you have Dominion, it’s a Canadian firm, and then you have Smartmatic which, you know, goes back to Venezuela. And we, here, we’re basically importing and bringing them into about, what was it? ***Thirty or so states, were using this type of software,*** what does that tell you?

Mr. Waller: It tells us a lot of people are asleep at the switch[.]

124. At the time of the report, OANN had not seen any evidence that Smartmatic was widely used in the 2020 election or that Smartmatic was used by Dominion in the 2020 election. OANN also knew that Mr. Waller had not presented any such evidence. That did not stop OANN because it had made the intentional choice to spread disinformation.

125. On November 28, 2020, Ms. McKinney and Mr. Johns again contributed to OANN’s disinformation campaign on *Tipping Point with Kara McKinney*. (*Tipping Point*, November 28, 2020 (Exhibit 25); Screenshots, *Tipping Point*, November 28, 2020 (Exhibit 25A).)

Mr. Johns returned to his tried and true themes: Smartmatic rigged the 2020 U.S. election for Joe Biden, and Smartmatic is associated with corrupt Venezuelan dictators.



Mr. Johns: The vast amount of investigation and when you're talking about probably easily, you know, maybe close to ten different means through which this election was fraudulently manipulated. *The most complicated, of course, of which is the Dominion and Smartmatic systems, which I would defy anyone anywhere who believes that there was not fraud related to these systems*, which clearly we haven't demonstrated that yet. I'm going to be fair about that, but can you point to any election anywhere in the world where these systems were utilized—or even in the United States, in Chicago, where they were, where there were fraudulent issues, where it has not been a factor in systematic electoral fraud? These are enormous, this is an enormous, enormous troubling system . . . [W]here any election official made the decision to acquire this particular system, I cannot understand why they would even be in their jobs today. This was [] the singular biggest obligation they had and they had that obligation at the time . . . there was bipartisan concern about electoral fraud, and to go out and acquire this system, knowing its history, knowing its attachment association with the dictatorship in Venezuela, and the use that it played in the Argentina manipulations in the Philippines and elsewhere, including in Chicago, is an inexcusable decision.

126. At the time of the report, OANN had not seen any evidence that Smartmatic rigged the 2020 U.S. election for Joe Biden or that Smartmatic was founded by corrupt dictators. And OANN knew that none of its guests, including Mr. Johns, had produced any evidence supporting those claims. That did not stop OANN because OANN wanted to spread disinformation and invited guests on its shows that allowed it to do so.

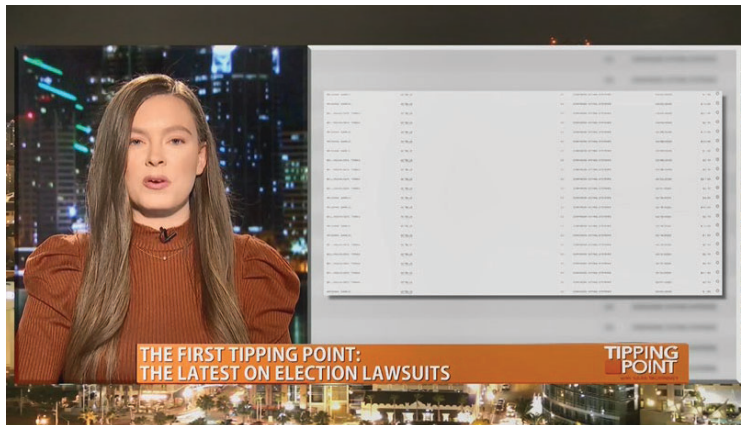
127. On December 1, 2020, OANN aired an exclusive interview between Mr. Hines and Mr. Fitton on *Breaking News Live with Patrick Hussion*. (*Breaking News Live*, December 1, 2020 (Exhibit 26); Screenshots, *Breaking News Live*, December 1, 2020 (Exhibit 26A).) Mr. Hines filmed the interview in OANN's Washington, D.C. news bureau. On information and belief, the interview was researched and produced in OANN's Washington, D.C. news bureau.



Mr. Fitton: *I think there's strong evidence that something went on in Venezuela with the Smartmatic computer system that was used to conduct the election there that Chavez obviously stole.* And it's a fair question to ask whether the—something similar is able to be done in the United States using similar systems, whether it be Smartmatic, or the Dominion version of electronic computer software. *We're hearing witness after witness highlight the security weaknesses of these systems.* And so there's nothing wrong with asking questions about it. Now, of course, we have to figure out whether anything was done improperly. But the numbers popping up in unusual ways, in Pennsylvania and Michigan, where you get these huge spikes in numbers occurring in the middle of the night. You know that, to me, at least ought to [] warrant a serious investigation before electoral college votes are certified later this month.

128. At the time of the report, OANN knew it had not seen any evidence of security weaknesses in Smartmatic's software, generally, or in the Smartmatic software used in Los Angeles County in the 2020 election, specifically. OANN also knew that no witnesses had come forward to support these claims about Smartmatic's software. At the time of the report, OANN had seen zero evidence to support Mr. Fitton's claims and knew that nobody had provided any evidence to support the claims. But that did not matter to OANN.

129. Later that day, Ms. McKinney once again contributed to the disinformation campaign on *Tipping Point* with Kara McKinney. (*Tipping Point*, December 1, 2020 (Exhibit 27); Screenshots, *Tipping Point*, December 1, 2020 (Exhibit 27A).) Ms. McKinney started her show with the “election fraud” story: “[I]s there anyone left to defend this constitutional republic? That’s the question I think we’re all asking ourselves after the Attorney General caves to Democrats on election fraud.”



Ms. McKinney: [E]ven if you want to chalk up all of the glitches, the ballot errors and other irregularities to simple mistakes, then why do they only go one way? Can anyone name a single time in which these mistakes help President Trump? It’s a simple question that has been raised time and again in the month since Election Day without any good answers from Democrats. However, looking at records from the Federal Election Commission may explain at least part of the reason for this code of silence. What we find is that 95% of all political contributions made by employees at Dominion Voting Systems between 2014 and 2020 went for Democrats. It’s the same story at Smartmatic, 86% of their employee contributions went to [D]emocrat candidates, specifically to Joe Biden, Senator Elizabeth Warren, Pete Buttigieg, and even to Adam Schiff. Now, this comes despite Smartmatic’s own website declaring, quote, “Smartmatic’s founders and employees adhere to a strict ethics code that, among other things, prohibits them from making political donations.” So here you have Dominion, which is a foreign-owned company and uses computer chips made in China, and ***Smartmatic, which has ties to Soros and the Castro regime in Venezuela, involved in US elections.***

130. On December 3, 2020, Ms. Hamill hosted Mr. Fitton on *In Focus with Stephanie Hamill*. (*In Focus*, December 3, 2020 (Exhibit 28); Screenshots, *In Focus*, December 3, 2020

(Exhibit 28A).) Ms. Hamill asked Mr. Fitton to comment on a speech by President Trump in which he “highlighted his concerns for the Dominion Voting [System].”



Mr. Fitton: [I]’m not at all confident that our election security is secure enough, in terms of someone on the inside, being able to manipulate the systems. [] *[W]hat was very interesting about being reporting, before the election, that Chavez had manipulated the election results using electronic computer systems, named—namely Smartmatic, in Venezuela.* And it’s a fair question to ask whether those results, whether results using similar systems could be similarly manipulated.

131. On December 5, 2020, OANN broadcast a pre-produced news segment about Smartmatic on the 9AM hour of the *News Room*. (*News Room*, 9AM, December 5, 2020 (Exhibit 29); Screenshots, *News Room*, 9AM, December 5, 2020 (Exhibit 29A).) Reporter Emily Finn stated that “Smartmatic denied having any connection with Dominion Voting Systems in the U.S.,” but OANN nonetheless broadcast a segment stating the opposite.



OANN Reporter: A Sunday report verified that Soros-linked Smartmatic may be connected to the sale of election technology to Dominion, which is being used to count votes in at least 24 US states. In a tweet last week, Smartmatic claimed to have never sold technology [to Dominion]. Smartmatic also denied having any connection to the controversial company.

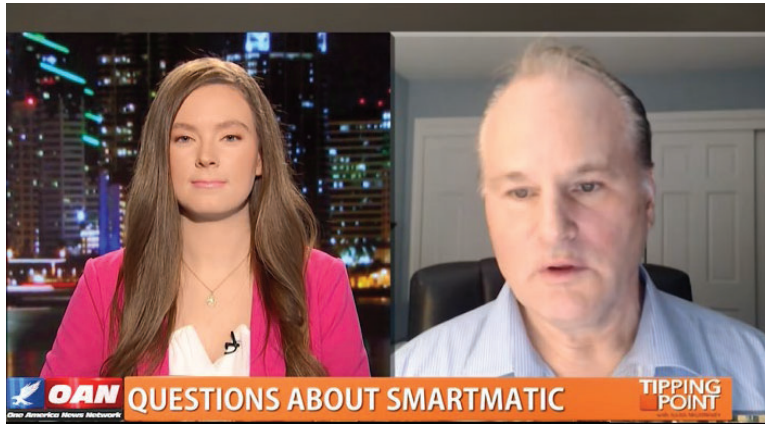
OANN Reporter: Chairman Mark Malloch Brown sits on the board of George Soros' Open Society Foundation, which has a revenue of more than \$300 million and has reportedly given away billions of dollars to left wing organizations around the world. Malloch-Brown has also served as Vice Chairman of Soros' investment funds. Meantime, Smartmatic has faced controversy in the past with allegations of rigging the 2013 election in Venezuela, on behalf of embattled socialist President Nicolás Maduro.

OANN Reporter: *This, as the latest in a series of connections between voting systems employed in the US and abroad and the Soros-linked company, to surface amid emerging evidence of voter fraud in the US presidential election.*

132. At the time of each of those reports, December 5 and earlier, OANN had seen no evidence that: Dominion machines used Smartmatic software in the 2020 election, Smartmatic software switched any votes in the 2020 election, or Smartmatic had ties to any dictators (Venezuelan or Cuban). But that did not stop OANN from publishing and republishing those claims. OANN had made the intentional choice to spread disinformation. Facts did not matter to OANN.

133. On December 7, 2020, Ms. McKinney again hosted Mr. Johns on her show, *Tipping Point with Kara McKinney*. (*Tipping Point*, December 7, 2020 (Exhibit 33); Screenshots, *Tipping*

Point, December 7, 2020 (Exhibit 33A.) Mr. Johns started his interview by stating “we have to look at the Dominion and Smartmatic issues as almost a national crisis.”



Mr. Johns: *We have evidence that is both suggestive and some that is indisputable. Affidavits that have been signed as it relates to the technology and its vulnerability. All sorts of enormously troubling international ties.* And the deeper, you know, we begin to look into this, the more that’s being revealed that’s hugely suggestive of the development, but the technical vulnerabilities and also the issue of its ownership status, which I think is a predominant consideration right now with \$400 million put into the holding company of Dominion by Chinese Communist Party and other officials. I mean, so this is like literally the definition of what you would not want to see in American voting system. And yet, apparently, which is troubling to me, we had 28 states and 2000 jurisdictions in this country, who looked at all of the available options, and mysteriously concluded that this system was the best option available to them, when there was abundant information available, including multiple reports issued by the state of Texas, regarding its susceptibility to manipulation, and remote and in person vote manipulation. Why? So you see, the question right now, I think, and the challenge right now, is where, you know, what were the considerations that went into the acquisition of this equipment? And I’m saying that simultaneously, obviously, all the legal challenges, because it does appear to be that [] those are credible, but [] how do we get 2000 individual jurisdictional decisions to utilize this, this notoriously flawed and troublingly affiliated company, for the purposes of the most important thing in our freedom, which is our vote.

134. By this time, OANN had already educated its audience (falsely) that Dominion used Smartmatic’s software. Moreover, at the time of this report, OANN knew it had not seen any evidence, “suggestive” or “indisputable,” indicating that voting machines rigged or stole the 2020 U.S. election.

135. On December 21, 2020, Mr. Hines returned to the disinformation campaign from OANN's Washington, D.C. news bureau. (*News Room*, 3PM, December 21, 2020 (Exhibit 34); Screenshots, *News Room*, 3PM, December 21, 2020 (Exhibit 34A).) During the *News Room* broadcast, OANN broadcast an interview of Mr. Hines and Clay Clark, a businessman and podcast host. The reporter introducing Mr. Clark said that he “[has] been in contact with Lin Wood,” an attorney working with Ms. Powell on her election lawsuits. Mr. Hines filmed the interview in OANN's Washington, D.C. news bureau. On information and belief, the interview was researched and produced in OANN's Washington, D.C. news bureau.



136. Mr. Hines asked Mr. Clark to explain the state of President Trump's re-election efforts.

Mr. Clark: We all went in and voted [] using hardware, [] called Dominion, the Canadian owned hardware company, that tabulates your votes, has Chinese parts on it. Step two, *the software, known as Smartmatic or Sequoia, that software was originally coded out by Communist Venezuelans*. Step three, for added integrity, *your votes were shipped to Frankfurt, Germany*, where your votes were stored on Amazon servers. And then step four, *in Barcelona, Spain, the votes were somehow tabulated there, and there was a little feature on the software that allows people to switch votes*.

137. At the time of the report, OANN had not seen any evidence supporting steps two, three, or four. OANN also knew that no one had presented evidence of step two, three, or four. But OANN asked Mr. Clark to appear on its show to make the claim because it fit OANN's story.

D. OANN’s disinformation campaign was a success for the network and OANN did not want to lose its new viewers—so OANN continued to defame Smartmatic throughout 2021.

138. OANN’s disinformation campaign against Smartmatic in November and December 2020 achieved its purpose. Post-election, OANN’s audience grew “at a rapid clip,” and OANN continued to directly compete with Fox News for viewers. (12/10/20 *The New Republic*, *Fox News Is in Trouble* (Exhibit 144).) Former senior news producer Martin Golingán summarized OANN’s strategy: “When former President Trump said that the election was stolen, the viewer feedback was incredible. As a result, [OANN] continued to air pieces after the election to support this narrative.” (5/20/21 M. Golingán Decl. ¶ 9, *Coomer v. Donald J. Trump for President, Inc., et al.*, No. 2020cv034319 (Colo. Dist. Ct.) (“Golingán Decl.”) (Exhibit 151).)

139. In November 2020, a record 767,000 people installed the OANN app through AT&T, *nine times* as many as in October. (10/6/21 Reuters, *Special Report: How AT&T helped build far-right One America News* (Exhibit 157).) OANN’s website peaked at 15 million visits per month from November 2020 to January 2021, up from 8 million visits. (*Id.*) An analysis performed by Similarweb found that during this time period, OANN website visitors had the same loyalty rate as Fox News and Newsmax visitors. (*Id.*)

1. OANN distinguishes itself from the competition by doubling-down after receiving a retraction letter.

140. OANN had found its niche and did not want the gravy train to end. OANN soon found another way to distinguish itself from the competition—ignore a retraction demand.

141. On December 18, 2020, after receiving a retraction demand letter from Smartmatic, Fox News broadcasted a prerecorded interview with Eddie Perez, the Global Director at the Open Source Election Technology Institute on *Lou Dobbs Tonight*, one of the programs at the center of Fox News’s disinformation campaign. On December 20, 2020, Fox News broadcast the same

prerecorded interview with Mr. Perez on *Sunday Morning Futures with Maria Bartiromo* and *Justice with Judge Jeanine*. During the interview, Mr. Perez explained that there was no evidence in support of the claims that Fox News—and OANN—had been making about Smartmatic in November and December 2020.

142. On December 19, 2020, after receiving a retraction demand letter from Smartmatic, Newsmax published an article on its website titled “*Facts About Dominion, Smartmatic You Should Know*.” The article confirmed that there was no evidence to support the claims that Newsmax—and OANN—had been making about Smartmatic in November and December 2020.

143. Newsmax also had its anchors read a pre-prepared statement on multiple programs acknowledging that there was no evidence to support the claims that Newsmax—and OANN—had been making about Smartmatic. Newsmax anchors read this pre-prepared statement on December 19, 2020 (*The Count*) and on December 21, 2020 (*American Agenda*, *John Bachman Now*, *The Chris Salcedo Show*, *Greg Kelly Reports*, and *National Report*).

144. On December 11, 2020, OANN also received a retraction demand letter from Smartmatic. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46).) The 14-page retraction demand letter identified many of the false and misleading statements published by OANN, explained the reasons the statements were false and misleading, and requested a full and complete retraction.

145. After receiving the retraction demand letter, OANN did not acknowledge that there was no evidence to support the claims that it had been making about Smartmatic, even though OANN knew there was no such evidence. OANN decided that its viewership and online engagement were more important than the truth. So OANN doubled down.

146. On December 26, 2020, on *Weekly Briefing with Christina Bobb*, OANN played a clip from the December 21, 2020 *John Bachman Now* broadcast on Newsmax, in which Mr.

Tabacco acknowledged the absence of evidence. (*Weekly Briefing*, December 26, 2020 (Exhibit 45); Screenshots, *Weekly Briefing*, December 26, 2020 (Exhibit 45A).) In the clip, anchor John Tabacco read the statement Newsmax prepared in response to Smartmatic's retraction demand letter.

Mr. Tabacco: Newsmax would like to clarify its news coverage and note, that it has not reported as true certain claims made about these companies. There are several facts our viewers and readers should be aware of. Newsmax has found no evidence that either Dominion or Smartmatic owns the other, or has any business association with each other. We have no evidence that Dominion uses Smartmatic software or vice versa. No evidence has been offered that Dominion or Smartmatic used software or reprogramed software that manipulated votes in the 2020 election.

147. Instead of using this clip as an opportunity to educate its viewers, OANN anchor Christina Bobb and invited guests, Cory Mills and Chris Farrell, ridiculed Newsmax's statement and Smartmatic's retraction demand letter and doubled down on OANN's own disinformation campaign.



Ms. Bobb: This is astonishing. [Smartmatic and Dominion] share an address in the Bahamas, but yet they have nothing to do with each other. What do you think about Newsmax succumbing to this statement?

Mr. Mills: [Y]ou can go back and actually find interviews from the owner of Smartmatic who talks about utilizing licensing from Dominion in the past for certain international areas. There is a clear link together. I don't think Newsmax had to retract or correct their statement. I think the onus should be

on the owner to demonstrate and to prove that there is no further links between Smartmatic and Dominion, and I don't think he can be able to do that today.

Mr. Farrell: It looks like a threatening letter from some attorney.

Mr. Mills: They look like a hostage.

Ms. Bobb: That's exactly what happened.

Mr. Farrell: This is the reaction from a litigation threat letter.

Ms. Bobb: They're bullying them through litigation.

Mr. Farrell: And what the answer and response to that is, great, we look forward to taking discovery, we'll depose you, [] we'll depose you and your board of directors, and we'll look at your financials. [A]nd that's the counterpoint to this. [] But they got spooked, they got spooked.

148. President Trump appreciated OANN's refusal to acknowledge that there was no evidence to support what it had been publishing about voting machines. On January 1, 2021, he tweeted his thanks: "@FoxNews Weekend Daytime is not watchable. Switching over to @OANN!" (Tweet, @realDonaldTrump, Jan. 1, 2021 (Exhibit 145).)

149. OANN had found a winning recipe: spread disinformation about the election and Smartmatic to get views and viewer loyalty. In January 2021, 517,000 additional people installed the OANN app through AT&T. (10/6/21 Reuters, *Special Report: How AT&T helped build far-right One America News* (Exhibit 157).) Given this success, OANN did not want to change its message even though a new administration took office (Joe Biden and Kamala Harris were sworn in as President and Vice President of the United States on January 20, 2021).

2. OANN teams up with Mike Lindell to continue the disinformation campaign.

150. To keep its momentum going, OANN decided to team up with Michael J. Lindell. Mr. Lindell (a/k/a "the MyPillow guy") is an American businessman, entrepreneur, and author. He

is the founder and CEO of MyPillow, Inc. (“MyPillow”), a company that markets more than 100 products, but is most famous for its pillows. MyPillow’s success relies heavily on TV ads. In the first three quarters of 2020, MyPillow spent more than \$62 million on TV ads, with nearly 99% of that going to cable channels like OANN. (1/12/21 The New York Times, *As Corporate America Flees Trump, MyPillow’s C.E.O. Stands by Him* (Exhibit 147).)

151. Following the 2020 U.S. election, Mr. Lindell began regularly appearing on television, radio shows, and podcasts. Mr. Lindell undertook his own disinformation campaign and spread a false narrative that there was widespread voter fraud in the 2020 U.S. election. Smartmatic played a central role in Mr. Lindell’s disinformation campaign.

152. After the 2020 U.S. election, Mr. Lindell produced a series of “documentaries” about the 2020 U.S. election. These “documentaries” were filled with lies about Smartmatic. Despite OANN knowing that the “documentaries” contained false statements about Smartmatic and knowing the election had not been rigged or compromised, OANN invited Mr. Lindell to broadcast his “documentaries” on OANN. OANN chose to partner with Mr. Lindell because his claims fit its preconceived narrative.

153. Before airing Mr. Lindell’s first “documentary,” *Absolute Proof*, OANN promoted it using OANN’s official twitter account. On February 4, 2021, OANN posted a thirty-second trailer for *Absolute Proof* with the caption “Join MyPillow CEO Mike Lindell for a never-before-seen report breaking down election fraud evidence & showing how the unprecedented level of voter fraud was committed in the 2020 Presidential Election.” (Tweet, @OANN, Feb. 4, 2021 (First Tweet) (Exhibit 149).) OANN ended its tweet with the reminder “Only on #OANN.” (*Id.*) That same day, OANN posted the trailer with another caption: “Growing evidence of election fraud reveals that the presidency of the United States has been stolen from the American people. Join My Pillow CEO Mike Lindell for an exclusive report.” (Tweet, @OANN, Feb. 4, 2021

(Second Tweet) (Exhibit 150).) At that time, OANN knew there was no evidence of election fraud and knew the election had not been stolen.

154. From February 5 to February 8, 2021, OANN broadcasted *Absolute Proof* thirteen times. OANN did this despite knowing that Mr. Lindell’s “documentary” was factually and demonstrably inaccurate. OANN essentially admitted this by issuing a “disclaimer” before it aired *Absolute Proof*. The “disclaimer” read:

DISCLAIMER

Michael James Lindell has purchased the airtime for the broadcast of this program on One America News (“OAN”) network. Mr. Lindell is the sole author and executive producer of this program and is solely and exclusively responsible for its content. The topic of this broadcast is the 2020 election. OAN has undertaken its own reporting on this topic. This program is not the product of OAN’s reporting. The views, opinions and claims expressed in this program by Mr. Lindell and other guests, presenters, producers, or advertisers are theirs, and theirs alone and are not adopted or endorsed by OAN or its owners. In particular, OAN does not adopt or endorse any statements or opinions in this program regarding the following entities or people: US Dominion Inc. (and any related entities); Smartmatic USA Corp.; Brian Kemp; Brad Raffensperger; or Gabriel Sterling. Further, the statements and claims expressed in this program are presented at this time as opinions only and are not intended to be taken or interpreted by the viewer as established facts. The results in the 2020 Presidential election remain disputed and questioned by millions of Americans who are entitled to hear from all sides in order to help determine what may have happened.

155. This “disclaimer” was merely OANN’s last ditch attempt to avoid defamation liability for publishing the defamatory statements made in *Absolute Proof*. But this “disclaimer,” which flashed briefly in fine print at the beginning of the “documentary,” was undercut by OANN’s tweets promoting the “documentary” to its viewers. OANN promised its viewers that *Absolute Proof* would be “a never-before-seen report breaking down election fraud evidence &

showing how the unprecedented level of voter fraud was committed in the 2020 Presidential Election.” (Tweet, @OANN, Feb. 4, 2021 (First Tweet) (Exhibit 149).)



156. In *Absolute Proof*, Mr. Lindell and his guest speakers claimed that China infiltrated the 2020 U.S. election through voting machine technology, including Smartmatic. (*Absolute Proof*, February 5, 2021 (Exhibit 35); Screenshots, *Absolute Proof*, February 5, 2021 (Exhibit 35A).) In the two-hour “documentary,” Mr. Lindell claimed that he had unequivocal proof that the 2020 U.S. election was rigged through election voting technology, including Smartmatic.

Mr. Lindell: I think it was like January 9th, all of a sudden, these people, they brought me some, a piece of evidence, that’s 100% proved. It’s like a print of inside the machine of the timestamp that showed another country, other countries attacking us, hacking into our election through these machines, and it shows a vote’s flipped. And I’m going wow, I got to get this out there. And from that point on, I started putting it out there[.]

157. Colonel Phil Waldron, one of Mr. Lindell’s guests in *Absolute Proof*, tied Smartmatic software to “inherent vulnerabilities that were built into” other voting systems used in the 2020 U.S. election.

Col. Waldron: So a critical capability for any of this to happen are the inherent vulnerabilities that were built into ES&S and Dominion software, which is, you know, again, we’ve proven through [] our work that this is all related directly back to the soft, Smartmatic, [] SGO Smartmatic software core . . . the board of SGO Smartmatic because they own a, an air purification company. So just think about it, if you get to pick an administration that is favorable to your company, say if they [passed] the Green New Deal, and you’re going to make billions and billions of dollars off of government-

mandated air purification systems and public buildings . . . you would spend quite a bit of money on the frontside to make sure the election was done.

158. On February 8, 2021, Mr. Ball promoted *Absolute Proof* on OANN's *Real America with Dan Ball*. (*Real America*, Feb. 8, 2021 (Exhibit 36); Screenshots, *Real America*, Feb. 8, 2021 (Exhibit 36A).) Before interviewing Mr. Lindell, Mr. Ball touted *Absolute Proof* as “a special documentary” that provided “evidence” of “election fraud.”

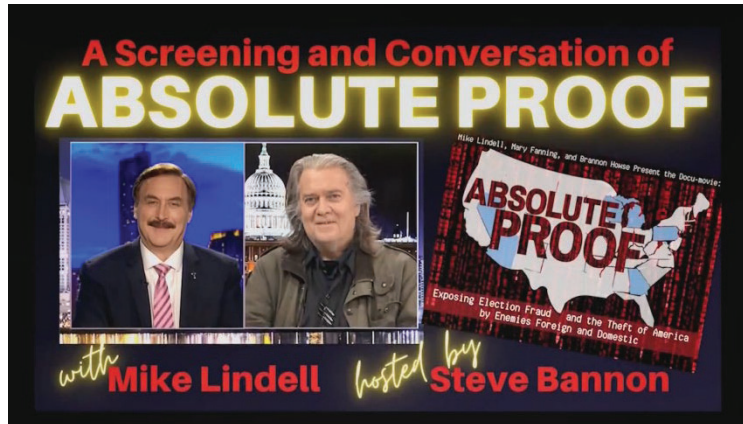
Mr. Ball: [I]f you've been watching OAN, and right before this program, you saw a special documentary that was produced by the CEO of MyPillow, Mike Lindell. He put a lot of money thought and time into this. He went around the nation collecting evidence that he believes proves there was voter fraud and election fraud, whether you believe it or not.



159. After he introduced Mr. Lindell, Mr. Ball asked Mr. Lindell to “tell folks [] [w]hat they’re going to see in this two-hour documentary that you produced.”

Mr. Lindell: What they’re going to see is something they’ve never heard before, never seen and that’s cyber forensics footprints. They’re gonna, they’re gonna see in there, but which country it came from; the ID of the computer, the IP address. Where it came over here, they have IP address of their computer broke into here, the actual ID number of the computer, and then how many votes were flipped, whether they got in or not, it’s a cyber footprint it’s what the government uses. When they if you did an investigation, this is what you’d be looking for. For that night. We have them from November 1 all the way through the election, and shows them a massive attack on our country by China and other country. China did 60% of this. It was all done through Dominion machines and Smartmatic machines. That was the tool they used.

160. On February 11, 2021, OANN broadcast *Absolute Proof* again, this time interspersed with an interview of Mr. Lindell by Steve Bannon. (*A Screening and Conversation of Absolute Proof*, Feb. 11, 2021 (Exhibit 37); Screenshots, *A Screening and Conversation of Absolute Proof*, Feb. 11, 2021 (Exhibit 37A).)

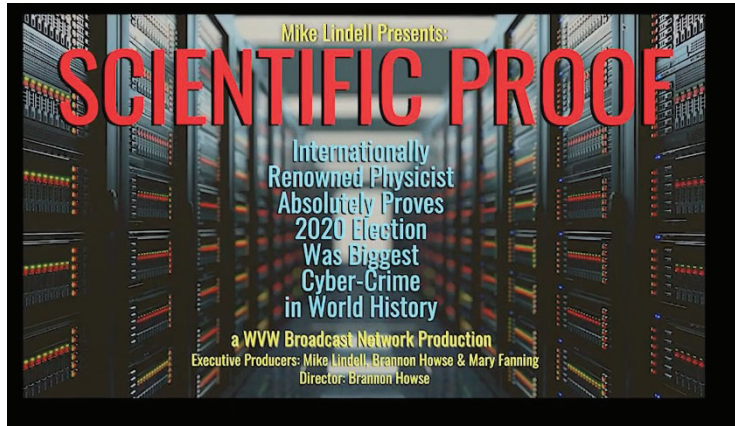


Mr. Bannon opened the broadcast by explaining “we’re going to kind of deconstruct it tonight, like [] NFL or college [] game film, go through, it’s the most controversial film in the world.” During the broadcast, Mr. Lindell commented on *Absolute Proof* and made additional false claims about Smartmatic, its business, its history, and its role in the 2020 U.S. election.

161. *Absolute Proof* was a success for Mr. Lindell and OANN. On February 19, 2021, Mr. Lindell appeared on Mr. Giuliani’s podcast to brag about *Absolute Proof*’s ratings. Mr. Lindell claimed that the “documentary” had been seen by 100 million people worldwide, with an average view time of 1 hour and 53 minutes. The ratings were bolstered by OANN’s repeated broadcasts of the film.

162. *Absolute Proof* was so successful for OANN that it decided to continue its partnership with Mr. Lindell. The next “documentary” OANN aired was a three-part “docu-movie” called *Scientific Proof*. OANN aired *Scientific Proof* three times on April 3 and an additional time

on April 4. (*Scientific Proof*, April 3, 2021 (Exhibit 38); Screenshots, *Scientific Proof*, April 3, 2021 (Exhibit 38A).)

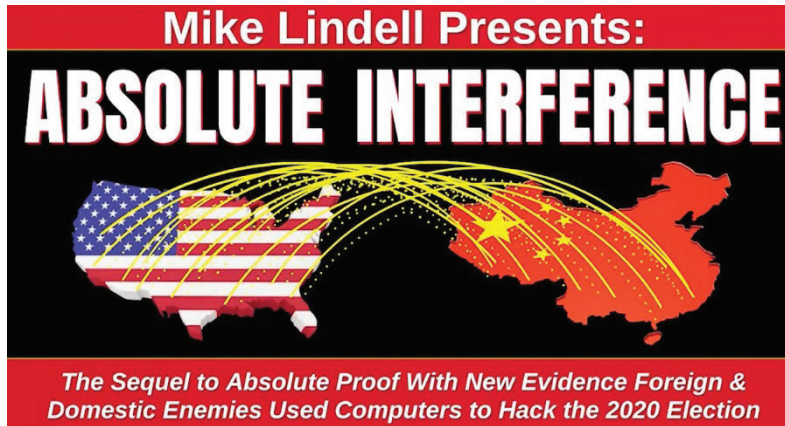


163. In *Scientific Proof*, Mr. Lindell and guest Douglas Frank again stated that the 2020 U.S. election was hacked through voting technology machines, including Smartmatic. Mr. Lindell unequivocally stated in *Scientific Proof* that the “name of the machine” does not matter because *all* voting technology machines were responsible for “flipping” votes in the 2020 U.S. election:

Mr. Lindell: I just want everyone to know that, why we’re showing other states and not just the swing state[s]. It was every state, it happened in your state []. Texas, when they said, oh, we didn’t use the Dominion machines. Doesn’t matter, the name of the, the name of the machine doesn’t matter . . . Smartmatic, ES&S, don’t matter.

164. On April 22, 2021, OANN aired yet another “docu-movie” produced by Mr. Lindell, *Absolute Interference*. (*Absolute Interference*, April 22, 2021 (Exhibit 39); Screenshots, *Absolute Interference*, April 22, 2021 (Exhibit 39A).) This was billed as the “Sequel to *Absolute Proof* with New Evidence Foreign & Domestic Enemies Used Computers to Hack the 2020

Election.” By this time, OANN had already educated its audience (falsely) that the “computers” referenced in the title were the voting technology machines, including Smartmatic.



165. The themes in *Absolute Interference* mirror Mr. Lindell’s earlier “documentaries”: foreign governments hacked the 2020 U.S. election through voting machine systems, including Smartmatic.

Mr. Lindell: I have proof, 100% proof that our country was attacked by China, by communism coming in, this foreign interference to our elections, through the machines, Dominion, Smartmatic, ES&S, all of them.

166. On May 3, 2021, OANN broadcast an interview of Mr. Lindell by reporter Pearson Sharp, in a segment titled “Mike Lindell Tackles Election Fraud.” (*Mike Lindell Tackles Election Fraud*, May 3, 2021 (Exhibit 40).) OANN and Mr. Lindell yet again claimed that Smartmatic was widely used in the 2020 U.S. election, including by Dominion and other voting machine systems.

Mr. Lindell: [T]hese machines where it got hacked, Dominion, Smartmatic, [] all of them are the same, ES&S. You just say Dominion, but it’s all machines. China hacked into our election and flipped millions upon millions of votes. We have a hundred percent evidence[.]

Mr. Sharp: Is it irrefutable truth?

Mr. Lindell: It’s absolute. I mean, that’s even higher than irrefutable.

167. On June 5, 2021, and June 6, 2021, OANN broadcast Mr. Lindell’s fourth “documentary,” *Absolutely 9-0*. (*Absolutely 9-0*, June 5, 2021 (Exhibit 41); Screenshots, *Absolutely 9-0*, June 5, 2021 (Exhibit 41A).) OANN heavily promoted *Absolutely 9-0*, both on

Twitter and on its network. For example, on June 4, 2021, OANN invited Mr. Lindell to promote the “documentary” on *The Real Story with Natalie Harp*.

168. In *Absolutely 9-0*, OANN again published material claiming that the 2020 election was hacked through voting machine technology, including Smartmatic. The “hook” of this “documentary” was that once the Supreme Court heard the “evidence” against the voting machine companies (including Smartmatic), it would vote 9-0 in favor of overturning the election.



Mr. Lindell: [O]n January 9th I received evidence of a cyber attack orchestrated by China on our 2020 election. I took that one piece of evidence, and I just went all in. This was something different, nobody had seen. This was something that came through the machines, the Dominion machines, the Smartmatic and other machines. This was a cyber attack. I didn’t know anything about cyber attacks. And boy, I learned, I had to learn real fast . . . this was 100% an attack by China on our country through these machines.

169. OANN has never presented any evidence supporting the claims made in its defamation campaign with Mr. Lindell. OANN never saw such evidence because it does not exist. Mr. Lindell’s story was made-up from the beginning, and OANN knew it. OANN has never retracted the statements or explained that there was no evidence in support of the claims OANN broadcast in its defamation campaign with Mr. Lindell. OANN partnered with Mr. Lindell even though it knew he would make inaccurate statements because OANN had chosen to spread disinformation. Mr. Lindell helped OANN do so.

E. OANN used multiple platforms to spread disinformation.

170. OANN's disinformation campaign against Smartmatic focused on five 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 OANN programs, OANN stated and implied that:

- Smartmatic's election technology and software were widely used, including in Dominion's voting machine system, in the 2020 U.S. election, including in six states with close outcomes;
- 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 were compromised and hacked during the 2020 U.S. election, and votes were sent abroad to be compromised;
- 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 and have been used to fix, rig, and steal elections before.

171. OANN used its broadcasting power from Washington, D.C. and California to disseminate the disinformation campaign to up to 35 million homes. But, OANN did not limit itself to its morning and evening news programs. OANN used all of its various platforms to disseminate the disinformation campaign.

- a. November 12, 2020: Mr. Salvi appears on *After Hours with Alex Salvi* discussing Smartmatic's role in election fraud. (*After Hours*, November 12, 2020 (Exhibit 1).)
- b. November 16, 2020: Ms. Aksalic appears on the 5AM hour of the *News Room* playing clips of Ms. Powell and Mr. Giuliani discussing "overwhelming evidence of voter fraud" and Smartmatic's role in the voter fraud. (*News Room*, 5AM, November 16, 2020 (Exhibit 2).)

- c. November 16, 2020: Ms. McKinney and Mr. Johns appear on *Tipping Point with Kara McKinney* discussing Smartmatic's role in rigging the 2020 U.S. election. (*Tipping Point*, November 16, 2020 (First Video) (Exhibit 3); *Tipping Point*, November 16, 2020 (Second Video) (Exhibit 4).)
- d. November 16, 2020: Mr. Dinow appears on the 11PM hour of the *News Room* playing clips of Mr. Giuliani's podcast and discussing Smartmatic's ties to Venezuelan dictators. (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)
- e. November 17, 2020: Ms. McKinney and Mr. Fitton appear on *Tipping Point with Kara McKinney* discussing Smartmatic's role in widespread election fraud. (*Tipping Point*, November 17, 2020 (Exhibit 6).)
- f. November 18, 2020: OANN posts a video of *Tipping Point* from November 16 using Twitter with the caption, "Dominion Scandal Goes Worldwide with Michael Johns." (Tweet, @OANN, November 18, 2020 (Exhibit 7).)
- g. November 18, 2020: OANN posts a video of *Tipping Point* from November 16 using Facebook with the caption, "Dominion Scandal Goes Worldwide with Michael Johns." (Facebook, One America News Network, November 18, 2020 (Exhibit 8).)
- h. November 19, 2020: Mr. Hussion appears on *Breaking News Live with Patrick Hussion* playing clips of a press conference held by Mr. Giuliani and Ms. Powell. (*Breaking News Live*, November 19, 2020 (Exhibit 9).)
- i. November 19, 2020: Mr. Ball and Ms. Kokalari-Angelakis appear on *Real America with Dan Ball* discussing Smartmatic's ties to Dominion and its

role in election fraud worldwide. (*Real America*, November 19, 2020 (Exhibit 10).)

- j. November 20, 2020: OANN posts an article on its website titled “President’s Lawyers Say Communist Funded Election Software Responsible For Alleged Voting Irregularities.” (OANN Website, *President’s Lawyers Say Communist Funded Election Software Responsible For Alleged Voting Irregularities*, November 20, 2020 (Exhibit 11).)
- k. November 20, 2020: OANN posts a link to an article titled “President’s Lawyers Say Communist Funded Election Software Responsible For Alleged Voting Irregularities” using Twitter. (Tweet, @OANN, November 20, 2020 (Exhibit 12).)
- l. November 20, 2020: OANN posts a link to an article titled “President’s Lawyers Say Communist Funded Election Software Responsible For Alleged Voting Irregularities” using Facebook with the caption, “The President’s lawyers are weighing in, once again, on election fraud during the 2020 White House race.” (Facebook, One America News Network, November 20, 2020 (Exhibit 13).)
- m. November 20, 2020: OANN broadcasts a news package with an unidentified reporter playing clips of Mr. Giuliani and Ms. Powell’s press conference on the 12AM hour of the *News Room*. (*News Room*, 12AM, November 20, 2020 (Exhibit 14).)

- n. November 20, 2020: Mr. Trippie appears on the 6AM hour of the *News Room* discussing Smartmatic's software flipping votes. (*News Room*, 6AM, November 20, 2020 (Exhibit 15).)
- o. November 20, 2020: Mr. Hines and Mr. Santos appear on the 3PM hour of the *News Room* discussing Smartmatic's ties to corrupt dictators and its role in rigging elections in South America. (*News Room*, 3PM, November 20, 2020 (Exhibit 16).)
- p. November 20, 2020: Ms. Hamill and Mr. diGenova appear on *In Focus with Stephanie Hamill* discussing the "hackability" of Smartmatic's software. (*In Focus*, November 20, 2020 (Exhibit 17).)
- q. November 22, 2020: Ms. McKinney and Mr. Becker appear on *Tipping Point with Kara McKinney* discussing the lack of transparency and security in Smartmatic's software. (*Tipping Point*, November 22, 2020 (Exhibit 18).)
- r. November 22, 2020: Ms. Lomibao appears on the 6PM hour of the *News Room* discussing Smartmatic "meddling in the latest U.S. election." (*News Room*, 6PM, November 22, 2020 (Exhibit 19).)
- s. November 23, 2020: Ms. McKinney and Mr. Waller appear on *Tipping Point with Kara McKinney* discussing Smartmatic's ties to corrupt Venezuelan dictators. (*Tipping Point*, November 23, 2020 (Exhibit 20).)
- t. November 25, 2020: OANN posts a video of Ms. Hamill and Mr. diGenova on *In Focus with Stephanie Hamill* from November 20 to its website with the caption, "Former U.S. Attorney, Joe DiGenova, On The Growing Evidence Of Voter Fraud." (OANN Website, *Former U.S. Attorney, Joe*

DiGenova, On The Growing Evidence Of Voter Fraud, November 25, 2020 (Exhibit 21).)

- u. November 27, 2020: OANN posts an article on its website titled “Sidney Powell Launches Election Lawsuits in Mich. And Ga.” (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- v. November 27, 2020: OANN posts a link to an article titled “Sidney Powell Launches Election Lawsuits in Mich. And Ga.” using Twitter. (Tweet, @OANN, November 27, 2020 (Exhibit 23).)
- w. November 27, 2020: OANN posts a link to an article titled “Sidney Powell Launches Election Lawsuits in Mich. And Ga.” using Facebook, with the caption, “Sidney Powell released the Kraken. On Thursday, the former Trump administration lawyer filed two explosive lawsuits in Georgia and Michigan.” (Facebook, One America News Network, November 27, 2020 (Exhibit 24).)
- x. November 28, 2020: Ms. McKinney and Mr. Johns appear on *Tipping Point with Kara McKinney* discussing Smartmatic “fraudulently manipul[at]ing” the 2020 U.S. election. (*Tipping Point*, November 28, 2020 (Exhibit 25).)
- y. December 1, 2020: Mr. Hines and Mr. Fitton appear on *Breaking News Live with Patrick Hussion* discussing the “security weaknesses” of Smartmatic’s software. (*Breaking News Live*, December 1, 2020 (Exhibit 26).)
- z. December 1, 2020: Ms. McKinney appears on *Tipping Point with Kara McKinney* discussing Smartmatic rigging the 2020 U.S. election for Democrats. (*Tipping Point*, December 1, 2020 (Exhibit 27).)

- aa. December 3, 2020: Ms. Hamill and Mr. Fitton appear on *In Focus with Stephanie Hamill* discussing Smartmatic's role in rigging previous elections for Chávez. (*In Focus*, December 3, 2020 (Exhibit 28).)
- bb. December 5, 2020: OANN broadcasts a news package on the 9AM hour of the *News Room* with an unidentified reporter discussing Smartmatic's role in rigging elections in Venezuela. (*News Room*, 9AM, December 5, 2020 (Exhibit 29).)
- cc. December 7, 2020: OANN posts an article on its website titled "Chairman Of Smartmatic's Parent Company To Become President Of George Soros's 'Open Society Foundations.'" (OANN Website, *Chairman Of Smartmatic's Parent Company To Become President of George Soros's 'Open Society Foundations'*, December 7, 2020 (Exhibit 30).)
- dd. December 7, 2020: OANN posts a link to an article titled "Chairman Of Smartmatic's Parent Company To Become President Of George Soros's 'Open Society Foundations'" using Twitter. (Tweet, @OANN, December 7, 2020 (Exhibit 31).)
- ee. December 7, 2020: OANN posts a link to an article titled "Chairman Of Smartmatic's Parent Company To Become President Of George Soros's 'Open Society Foundations'" using Facebook. (Facebook, One America News Network, December 7, 2020 (Exhibit 32).)
- ff. December 7, 2020: Ms. McKinney and Mr. Johns appear on *Tipping Point with Kara McKinney* discussing the "indisputable" evidence that Smartmatic had participated in a widespread conspiracy to steal the 2020 U.S. election. (*Tipping Point*, December 7, 2020 (Exhibit 33).)

- gg. December 21, 2020: Mr. Hines and Mr. Clark appear on the 3PM hour of the *News Room* discussing Smartmatic flipping votes in the 2020 election. (*News Room*, 3PM, December 21, 2020 (Exhibit 34).)
- hh. February 5-February 8, 2021: OANN broadcasts the two-hour “documentary” *Absolute Proof* thirteen times. (*Absolute Proof*, February 5, 2021 (Exhibit 35).)
- ii. February 8, 2021: Mr. Ball and Mr. Lindell appear on *Real America with Dan Ball* promoting *Absolute Proof* and discussing Smartmatic’s role in rigging the 2020 U.S. election. (*Real America*, February 8, 2021 (Exhibit 36).)
- jj. February 11, 2021: OANN broadcasts *Absolute Proof* interspersed with an interview of Mr. Lindell by Mr. Bannon. (*A Screening and Conversation of Absolute Proof*, February 11, 2021 (Exhibit 37).)
- kk. April 3-April 4, 2021: OANN broadcasts the “docu-movie” *Scientific Proof* four times. (*Scientific Proof*, April 3, 2021 (Exhibit 38).)
- ll. April 22, 2021: OANN broadcasts the “docu-movie” *Absolute Interference*. (*Absolute Interference*, April 22, 2021 (Exhibit 39).)
- mm. May 3, 2021: OANN broadcasts an interview of Mr. Lindell by Mr. Sharp discussing Smartmatic’s role in the 2020 U.S. election. (*Mike Lindell Tackles Election Fraud*, May 3, 2021 (Exhibit 40).)
- nn. June 5-June 6, 2021: OANN broadcasts the “documentary” *Absolutely 9-0* twice. (*Absolutely 9-0*, June 5, 2021 (Exhibit 41).)

172. OANN used these platforms not only to directly disseminate its publications to the largest audience possible but also to ensure republication. OANN posted videos of the broadcasts

and links to its articles on its Twitter page to over 1 million followers and on its Facebook page to over 1.5 million followers. Most importantly, OANN had the attention of President Trump. During the disinformation campaign, President Trump tweeted @OANN to his tens of millions of followers approximately 38 times.⁷ OANN knew or expected President Trump would promote its brand if it published content stating or implying that Smartmatic had participated in a conspiracy to rig the election.

173. OANN also ensured the broad dissemination of the disinformation campaign by posting videos of the broadcasts on its YouTube and Rumble pages. OANN's YouTube page has over 1.4 million subscribers and has received over 215 million views. (See <https://www.youtube.com/c/oann/about>.) As of November 1, 2021, OANN's Rumble page has almost 900,000 subscribers.

F. OANN presented its news coverage of Smartmatic as factual and based on evidence.

174. OANN did not present its statements regarding Smartmatic as opinion, rhetorical hyperbole, or speculation. It did not present its statements regarding Smartmatic as being educated guesses, possibilities, or mere allegations. OANN presented its statements regarding Smartmatic as being fact—fact supported by voluminous evidence. Likewise, OANN told its viewers and readers that OANN's coverage of Smartmatic was one of the only ways for them to receive reliable and accurate information. OANN told its viewers and readers to discredit and ignore whatever they heard from other sources.

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

- a. In a video on OANN's "About" page, OANN informs viewers that "There is only one network you can trust to bring you real news. Straight-shooting,

⁷ See Trump Twitter Archive, <https://www.thetrumparchive.com/>.

hard-hitting stories the mainstream media doesn't want you to hear[.] Credible, honest, unbiased reporting from a source you can trust. One America News Network, your source for credible news."

- b. In September 2020, OANN published a press release on its website stating that it had entered into a long-term distribution agreement and described itself as "more live, credible national and international news throughout the day with less talking heads expressing opinions."
- c. At the time of its launch, OANN's tagline was "Your Nation, Your News." In 2016, OANN changed its tagline to "Your Source for Credible News."
- d. In its Twitter bio, OANN states that it is "Your Nation. Your News."
- e. In a Tweet promoting *Real America with Dan Ball*, OANN told viewers, "Are you sick and tired of the biased, fake news media that's tearing our country apart? Tune in weeknights on One America News for Real America with Dan Ball. Real news, for real Americans!"

176. Second, OANN stated (falsely) that the information it published about Smartmatic was based on evidence, investigations, and facts. OANN intentionally created the impression that the information it published about Smartmatic was predicated on reliable, verifiable facts as opposed to speculation or opinion. For example:

- a. Elma Aksalic: "During an interview on Sunday, attorney Sidney Powell said election results in multiple states are quote, 'getting ready to overturn.' Powell cites an ***overwhelming amount of evidence the President's legal team has received concerning voter fraud and irregularities***. Powell goes on to claim ***she has enough evidence***, some even dating back to 2016, ***to launch a widespread criminal investigation***." (*News Room*, 5AM, November 16, 2020 (Exhibit 2).)
- b. Sidney Powell: "[W]e are soaking in information through fire hoses of complicated mathematical alterations to the votes. ***We have identified the system capability that does it***. It does in fact exist regardless of what the name of it is. It works through the Dominion company's voting machines that were in 30 states and does indeed alter and flip voting results." (*News Room*, 5AM, November 16, 2020 (Exhibit 2).)
- c. Kara McKinney: "***For those who say that President Trump's attorneys haven't given any evidence of their claims, let's go through, through some of that together . . .*** So first off, let's start off with claims that Dominion Voting Systems switched votes. Well, ***we know for sure that it did happen*** in counties in Michigan where thousands of Trump votes were wrongly awarded to Biden and called glitches. Also these accusations of Dominion

switching votes were made by Democrats Senators Elizabeth Warren, Amy Klobuchar and Ron Wyden just last year, back when they were saying Russia might try to steal this election. Isn't it likely that whatever evidence these Democrat senators were looking at last year, Powell now has? In fact, Dominion's own user guide admits that its software suffers from a medium to high risk of having its voting data changed. And how about that letter from Democratic Congresswoman Carolyn Maloney from 2006 where she highlights concerns about Smartmatic in its history of being used by the Chávez-led Venezuelan government in their corrupt elections. Does she make that claim without evidence too or only Powell?" (*Tipping Point*, November 20, 2020 (Exhibit 43).)

- d. Michael Johns: "[F]or all of these, you know, Democrats and mainstream media who have said there's no evidence, there's no evidence, there's no evidence—*there's never any evidence in a criminal allegation until evidence is presented and accepted by the Court and considered. But a one hundred and four page complaint issued yesterday by Sidney Powell*, a very credible attorney with a long record of history; to me, having read it now, *is filled with affidavits, acclamations of fact*, and, in the case of the Georgia complaint, you see just about every conceivable act of election—of illegal election manipulation was utilized in support of Biden at the President's expense." (*Tipping Point*, November 28, 2020 (Exhibit 25).)
- e. Stephanie Hamill: "***President Trump*** is pressing forward with his fight contesting the results of the 2020 presidential election. In a 45 minute address to the nation, the President ***laid out allegations of widespread voter fraud and voting irregularities reported from coast to coast***. He's also ***promising to present the evidence of mass fraud*** in court." (*In Focus*, December 3, 2020 (Exhibit 28).)
- f. Stephanie Hamill: "***There are now hundreds of affidavits*** sworn under penalty of perjury, ***detailing widespread voter fraud***." (*In Focus*, December 3, 2020 (Exhibit 28).)
- g. Clay Clark: "[O]n our podcast, we've interviewed the founder of Overstock.com, we've had the head of [] eBay's fraud protection on our show. ***We've had countless experts, and everybody has shown there's irrefutable proof of voter fraud***." (*News Room*, 3PM, December 21, 2020 (Exhibit 34).)
- h. Michael Lindell: "[Y]ou're going to see on this show. We have [] ***cyber forensic experts, we're going to have 100%, you're going to see all this evidence that by the time you're done seeing it, you're going to go wow, 100%, it proves exactly what happened, that these machines were used to steal our election by other countries***, including China." (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)

- i. Michael Lindell: “And we’ve, we’ve just shown everybody in the world ***100% evidence that this was an attack on our country and is still under attack by China and other countries through the use of these machines used in our election.***” (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- j. Michael Lindell: “***100% we have the election fraud. Watch my[] video, watch my documentary.*** And you too will go, what?” (*Real America*, Feb. 8, 2021 (Exhibit 36).)

177. Third, OANN informed their viewers that Mr. Giuliani, Ms. Powell, and other guests were lawyers to create the impression that they were reliable sources of facts. As lawyers, Mr. Giuliani, Ms. Powell, and Mr. diGenova are barred by their ethical codes of conduct from lying when they are representing a client. For example:

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

fraudulent act by a client.” (District of Columbia Rules of Professional Conduct 4.1).

178. Fourth, OANN discussed Mr. Giuliani and Ms. Powell’s backgrounds and experience as lawyers in order to bolster their credibility. OANN did this to create the impression that Mr. Giuliani and Ms. Powell are reliable sources of fact and experts on the “election fraud” issue. For example:

- a. Julie Kelly: “You know what *I’m really struck by [] Sidney Powell[.] The emotion in her voice, and I mean, this is a tough lawyer, she has seen it all.* She took Andrew Weissman on head on and [] the Enron case. She’s seen all the tricks of the trade as she’s litigated the Michael Flynn case, *but to hear her voice shaking, the emotion that she expressed, understanding what’s going on here* and trying to make the media and the American public aware of really what is looking more and more like a stolen election. I think that’s what struck me the most is really, the facts are there, the details are there. *It’s explosive bombshell allegations, but for her to be so emotional, I think really put some weight behind what she said.*” (*Tipping Point*, November 19, 2020 (Exhibit 42).)
- b. Kara McKinney: “[*Sidney Powell’s*] *someone who’s seen a lot. We’ve seen what she’s done with the General Michael Flynn case* and how she’s, you know, been able to turn that around in a positive way get so much exculpatory evidence that the DOJ was hiding and sitting on for many, many years. So *we do know that she knows her stuff. This is you know, her field of expertise. When it comes down to it, especially when she was talking about the Dominion Voting Systems.* How Dominion is a Canadian-based company, they have servers around the world. There are some ties, perhaps to Smartmatic a comp, or a software company that may have some ties also to Venezuela.” (*Tipping Point*, November 19, 2020 (Exhibit 42).)
- c. Kara McKinney: “*I want [] remind[] the naysayers at Fox, among others, that Powell took on General Michael Flynn’s case when it seemed hopeless to do so as well.* He had already pleaded guilty, and the DOJ was adamant that it had turned over all of the exculpatory evidence that it had to Flynn’s defense. *For years, Powell pushed through claims that she was a conspiracy theorist on the hunt for documents that didn’t exist.* Just imagine if during those years, conservative pundits had also jumped down her throat, saying she had no evidence to substantiate her claims that Flynn was innocent and the victim of a weaponized FBI. An innocent man would be in prison right now. But now there’s more than just one life at stake. Our entire constitutional republic is hanging in the balance if we cannot restore

faith in our electoral process.” (*Tipping Point*, November 20, 2020 (Exhibit 43).)

- d. Michael Johns: “*I don’t think this is properly being presented in much of media with the fact that the two leading attorneys on this case, who have you know, are barred, have ethical obligations, are officers of the court, and are two unbelievably extraordinary Americans of impeccable integrity. Sidney Powell*, maybe not known to most Americans, but was a, you know, *a leading U.S. attorney early in her career at two different jurisdictions, she led hundreds of appellate cases*, I think she was admitted to law school at the age of 19. *An incredibly bright, successful attorney who has no basis reason, and every reason not to be misleading the American public. Rudy Giuliani will go down in history as one of the greatest icons of our lifetimes*, all the way back to breaking up the five, five crime families of New York City, to becoming the mayor, greatest mayor of America’s greatest city, and through, you know, an incredible navigation of a political, public policy, legal career. And *so when these two individuals stand before the world, and say that this election was fraudulently manipulated, the burden of proof shifts to proving that it wasn’t.*” (*Tipping Point*, November 20, 2020 (Exhibit 43).)
- e. J. Michael Waller: “*Sidney Powell’s, the whole so-called split with the, with the President’s legal team*—that she was never part of it in the first place, as you said, but there are a few clues out there. *No one is really criticizing her from the President’s own legal team.* And in fact, *Jenna Ellis*, who was a key member of the team, *tweeted out Sidney Powell’s comments in the Wall Street Journal today, as if to give the thumbs-up that everything’s fine.*” (*Tipping Point*, November 23, 2020 (Exhibit 20).)

179. Fifth, OANN intentionally created the impression that the information it published regarding Smartmatic was the only information that was accurate and truthful. OANN created this impression by telling readers and viewers to discount or ignore the information being provided by any source—government or media—other than OANN. It also told its viewers to discount Smartmatic’s retraction demand letters and the factual information contained therein. For example:

- a. Pearson Sharp: “The 2020 election is yet to be decided, and the biggest problem hinges over voting fraud. Does it exist, or doesn’t it? Well, *if you listen to the mainstream media today, you’d swear voting fraud is nothing more than a right-wing conspiracy theory.* No credible journalist would ever be caught suggesting it could possibly happen, or would they? *Well, this is CNN we’re talking about, so obviously, there’s no credibility to start.* But let’s ignore that for a moment and let CNN demonstrate for themselves exactly what hypocrisy in the media looks like. Take a look at these clips, some from today, after the 2020 election, and others from back

in 2006 when Democrats and the left-wing media actually claimed that voting fraud was a national security issue.” (*News Room*, 11PM, November 24, 2020 (Exhibit 44).)

- b. Pearson Sharp: “Today [] *the left-wing media has no problem painting all these concerns as nothing more than Republican tinfoil hat theories. However, One American News believes the American people have a right to know what’s actually happening* because the fate of an election and an entire country hangs in the balance.” (*News Room*, 11PM, November 24, 2020 (Exhibit 44).)
- c. Patrick Hussion: “We’re going to continue to bring you live coverage of these hearings as they happen from each of the states. And again, *One America News is the only one going wall to wall on this coverage, and the President is noticing on Twitter*, if you want to go check that out.” (*Breaking News Live*, December 1, 2020 (Exhibit 26).)
- d. Christina Bobb: “[T]hey share an address in the Bahamas, but yet they have nothing to do with each other. *What do you think about Newsmax succumbing to this statement [retraction demand letter]?*” Cory Mills: “You can go back and actually find interviews from the owner of Smartmatic who talks about utilizing licensing from Dominion in the past for certain international areas. There is a clear link together. *I don’t think Newsmax had to retract or correct their statement.* I think that the onus should be on the owner to demonstrate and to prove that there is no further links between Smartmatic and Dominion, and I don’t think that he can be able to do that today.” (*Weekly Briefing*, December 26, 2020 (Exhibit 45).)
- e. Chris Farrell: “*It looks like a threatening letter from some attorney . . . This is the reaction from a litigation threat letter . . . And with the answer in response to that is, great, we look forward to taking discovery. We’ll depose you, [] we’ll depose you and your board of directors, and we’ll look at your financials[.]* And that’s the counterpoint to this . . . *But [Newsmax] got spooked[.]*” (*Weekly Briefing*, December 26, 2020 (Exhibit 45).)

III. OANN’s False Statements and Implications About Smartmatic

180. OANN’s statements about Smartmatic were not facts. OANN’s statements about Smartmatic were lies. The demonstrably, verifiable facts are:

- Smartmatic’s election technology and software were only used in Los Angeles County, and **not** used by any other voting machine company, for the 2020 U.S. election.
- Smartmatic’s election technology and software were **not** used in other voting machines in the 2020 U.S. election, including in Dominion machines.

- 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 were **not** compromised and hacked during the 2020 U.S. election and **no** votes were sent overseas. No one has identified a shred of evidence that there were cyber-security issues in Los Angeles County. The votes were tabulated in Los Angeles County.
- 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 and have **not** been used to rig and fix elections before. 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 was used to rig, fix, or steal an election.

181. OANN did not let these demonstrable, verifiable facts stand in its way of publishing false claims about Smartmatic that would bolster its ratings and make it money.

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

182. The first lynchpin of OANN’s disinformation campaign was to convince viewers and readers that Smartmatic’s election technology and software were widely used during the 2020 U.S. election. OANN 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, including in battleground states.

183. OANN 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 its story, OANN tried to hedge its bets by linking Smartmatic to Dominion and other voting machine systems. OANN accomplished this by stating and implying that a corporate relationship between Smartmatic and Dominion existed and by stating and implying that

Smartmatic's technology and software was "in the DNA" of every other voting machine, including Dominion machines.

184. Below are some of the statements that were made by OANN to create the impression that Smartmatic's election technology and software were widely used, including in Dominion's voting machine system, during the 2020 U.S. election:

- a. Alex Salvi: "The Washington Examiner reporting this week quote, '***the Dominion voting systems, which has been used in multiple state where fraud has been alleged in the 2020 U.S. election***, was rejected three times by data communications experts from the Texas Secretary of State and Attorney General's Office for failing to meet basic security standards.' But it's not only Dominion. ***It's also Dominion's subsidiaries, such as Smartmatic*** which was used for the Philippines elections back in 2010 and 2013." (*After Hours*, November 12, 2020 (Exhibit 1).)
- b. Sidney Powell: "They're facing an election that was absolutely rigged . . . We have identified the system capability that does it. It does in fact exist regardless of what the name of it is. ***It works through the Dominion company's voting machines that were in 30 states and does indeed alter and flip voting results.***" (*News Room*, 5AM, November 16, 2020 (Exhibit 2).)
- c. Rudolph Giuliani: "Did you know a foreign company, ***DOMINION, was counting our vote in Michigan, Arizona and Georgia and other states.*** But ***it was a front for SMARTMATIC, who was really doing the computing.***" (*News Room*, 5AM, November 16, 2020 (Exhibit 2).)
- d. Kara McKinney: "It's also a convenient lie. Given that Trump attorney, Sidney Powell says a member of Biden's transition team is also a member of the board of directors for ***Smartmatic, which is a subsidiary of Dominion***["]." (*Tipping Point*, November 16, 2020 (First Video) (Exhibit 3).)
- e. Kara McKinney: "[T]his smacks to me of intention here on the Democrats' part, [] laying out over these past few years, red flags popping up here and there over these many, many years. And the fact that Democrats knew that and then pushed to ***bring these systems into as many as 30 states***["]." (*Tipping Point*, November 16, 2020 (Second Video) (Exhibit 4).)
- f. Mike Dinow: "The Gateway Pundit reports, ***Smartmatic sold its technology to Dominion Voting, that ran elections in Arizona, Michigan, Nevada, and Pennsylvania this year.***" (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)

- g. On-Screen Graphic: “Report: Soros-Backed Firm Installed Socialism in Venezuela; Dominion-Linked Smartmatic Had Chavez Aide on Board, ***Sold Rigged Election Tech to U.S. States.***” (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)
- h. Rudolph Giuliani: “They certainly stole the election in ***Detroit.*** They certainly stole the election in ***Pennsylvania.***” (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)
- i. Kara McKinney: “The even bigger issue at play here [is] systemic. For example, ***the voting system used in around 30 states, Dominion, and its subsidiary Smartmatic.*** It just so happens that a member of Biden’s transition team, Peter Neffenger, is a member of the Board of Directors for Smartmatic. The chairman of that company is also a board member for George Soros’ Open Society Foundation. That very same software was used a few years back to rig elections in Venezuela.” (*Tipping Point*, November 17, 2020 (Exhibit 6).)
- j. Kara McKinney: “So this begs the question, why are we using foreign companies to count our votes in the first place, and allowing that information to reportedly flow through servers overseas? And secondly, ***if even Democrats knew about these vulnerabilities with Dominion and Smartmatic years before this election, then why did they allow them to be used in so many states?*** Why didn’t more states follow in the lead of Texas in saying no? Perhaps that means they were chosen by election officials precisely because they are so flawed.” (*Tipping Point*, November 17, 2020 (Exhibit 6).)
- k. Patrick Hussion: “Rudy Giuliani says the Democrat Party conspired with socialist regimes overseas to steal this year’s election from the President. In a news conference, ***the President’s legal team said that they have evidence that Dominion Voting Systems and the Smartmatic software were used to switch votes from President Trump to Joe Biden.*** They add the technology is controlled by allies of Venezuela’s Maduro regime.” (*Breaking News Live*, November 19, 2020 (Exhibit 9).)
- l. Dan Ball: “[O]bviously ***these security folks at Dominion that set up the systems in the individual states, they can just do a little tweak here, a little tweak there to the program. It can make it so minor, to flip votes,*** but enough to make your guy win [.]” (*Real America*, November 19, 2020 (Exhibit 10).)
- m. OAN Newsroom: “The President’s lawyers are weighing in, once again, on ***election fraud during the 2020 White House race. While speaking in D.C. Thursday, they claimed votes were hacked and ballots were switched from President Trump to Joe Biden*** through technology that was developed in Venezuela.” (OANN Website, *President’s Lawyers Say Communist-*

Funded Election Software Responsible For Alleged Voting Irregularities, November 20, 2020 (Exhibit 11).)

- n. OANN Reporter: “Most claims center around the Canadian-made Dominion Voting Systems and the Venezuelan-made **Smartmatic Systems**. Sidney Powell says the same technology was used to secure a victory for Hugo Chávez in Venezuela and **could have been used across the country**.” (News Room, 12AM, November 20, 2020 (Exhibit 14).)
- o. Sidney Powell: “[O]ne 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**.” (News Room, 12AM, November 20, 2020 (Exhibit 14).)
- p. John Hines: “So what is the **connection between the Smartmatic machines and the Dominion machines** do you suppose?” Allan Santos: “So **they have a contract for using software** [.]” (News Room, 3PM, November 20, 2020 (Exhibit 16).)
- q. Stephanie Hamill: “Attorney Sidney Powell says **the software used in the voting machines across the country can be manipulated to alter vote totals**. Now Powell also points out that the software developed by Smartmatic is tied to major Democrat donor George Soros and the Clinton Foundation.” (In Focus with Stephanie Hamill, November 20, 2020 (Exhibit 17).)
- r. Samantha Lomibao: “This after reports found **Maduro allies were meddling in the latest U.S. election through a company called Smartmatic**.” (News Room, 6PM, November 22, 2020 (Exhibit 19).)
- s. Rudy Giuliani: “Smartmatic, which is the ultimate software, had switched 6,000 votes. It switched 6,000 votes from Trump to Biden. **So the poor people in Michigan that went in to vote for Trump ended up voting for Biden because the machine and the software**, that originates [] with Venezuela, a dictatorship, **changed their vote without their ever knowing it**.” (News Room, 6PM, November 22, 2020 (Exhibit 19).)
- t. Kara McKinney: “And then it just comes down to this idea of Smartmatic and Dominion—I know they’re trying to distance from each other. For example, Dominion says ‘we’re competitors in the marketplace, we have no ties whatsoever.’ You go back to old interviews, for example, of the former chairman for Smartmatic telling—in the Philippines, he was being interviewed and he says, ‘that **they work together with software and share some details there**.’ So what is the exact relationship between the two?” J. Michael Waller: “Well it’s still really unclear, but we do know that from the evidence presented so far—from this [] one affidavit that **we’ve already seen, that the current software for any Smartmatic compatible machine, the DNA is based on this [] Smartmatic material design[ed] in Venezuela**.

So that's the [] backbone of the software for any Dominion or other machine in the United States.” (Tipping Point, November 23, 2020 (Exhibit 20).)

- u. OAN Newsroom: “In both suits, ***Powell said the fraud [in Georgia and Michigan] mainly took place*** in the form of ‘old-fashioned ballot stuffing’ which was rendered ‘virtually invisible’ ***by Dominion and Smartmatic’s computer software.***” (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- v. Tom Fitton: “And it’s a fair question to ask whether the—something similar is able to be done in the United States using similar systems, whether it be ***Smartmatic, or the Dominion version of electronic computer software . . .*** the numbers popping up in unusual ways, ***in Pennsylvania and Michigan***, where you get these huge spikes in numbers occurring in the middle of the night.” (*Breaking News Live*, December 1, 2020 (Exhibit 26).)
- w. OANN Reporter: “A Sunday report verified that Soros-linked ***Smartmatic may be connected to the sale of election technology to Dominion, which is being used to count votes in at least 24 US states.***” (*News Room*, 9AM, December 5, 2020 (Exhibit 29).)
- x. OAN Newsroom: “The move comes after ***Smartmatic sold voting technology to foreign-owned Dominion, which is the controversial software used to count votes in 24 U.S. states for the 2020 election.*** Meanwhile, Smartmatic-tied Dominion voting service is facing backlash over what President Trump has described as instances of fraud in the 2020 elections.” (OANN Website, *Chairman Of Smartmatic’s Parent Company To Become President Of George Soros’s ‘Open Society Foundations’*, December 7, 2020 (Exhibit 30).)
- y. Michael Johns: “Look, I think we have to look at the Dominion and ***Smartmatic*** issues as almost a national crisis . . . [W]e had ***28 states and 2000 jurisdictions in this country, who looked at all of the available options, and mysteriously concluded that this system was the best option available to them[.]***” (*Tipping Point*, December 7, 2020 (Exhibit 33).)
- z. Clay Clark: “***We all went in and voted [] using hardware, [] called Dominion***, the Canadian owned hardware company, that tabulates your votes, has Chinese parts on it. Step two, ***the software, known as Smartmatic*** or Sequoia, that software was originally coded out by Communist Venezuelans. Step three, for added integrity, your votes were shipped to Frankfurt, Germany, where your votes were stored on Amazon servers. And then step four, in Barcelona, Spain, the votes were somehow tabulated there, and there was a little feature on the software that allows people to switch votes.” (*News Room*, 3PM, December 21, 2020 (Exhibit 34).)

- aa. Phil Waldron: “So a critical capability for any of this to happen are the inherent vulnerabilities that were ***built into ES&S and Dominion software, which is, you know, again, we’ve proven through, through our work that this is all related directly back to the soft, Smartmatic, SGO Smartmatic software core***[.]” (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- bb. Michael Lindell: “This was an attack on our country, ***these Dominion machines and Smartmatic, these machines that were [] the tools of this attack***, and we will never have another fair election [] if we don’t stop that, so I will never back down.” (*A Screening and Conversation of Absolute Proof*, Feb. 11, 2021 (Exhibit 37).)
- cc. Michael Lindell: “[B]ut the point of that, of bringing up the Texas thing is ***ESS, Smartmatic and Dominion, you can interchange the names, they all are the same***. The cyber phonetics we show it goes through all these machines, ***they’re all the same. This is [my] whole point***[.]” (*A Screening and Conversation of Absolute Proof*, Feb. 11, 2021 (Exhibit 37).)
- dd. Michael Lindell: “And [] as part of my due diligence, that’s been all this week. I wanted to go back to where this all started. And Venezuela, ***it all started in Venezuela with Smartmatic, not Dominion or the other one, it was with Smartmatic***.” (*A Screening and Conversation of Absolute Proof*, Feb. 11, 2021 (Exhibit 37).)
- ee. Michael Lindell: “***Smartmatic, ES&S, don’t matter. Just in Dallas alone, there was 57 vote, 57,000 votes flipped on***, and I don’t even know if that was before noon.” (*Scientific Proof*, April 3, 2021 (Exhibit 38).)
- ff. Michael Lindell: “100% it can only be done by machines. I can’t stress that enough.” Douglas Frank: “Absolutely.” Michael Lindell: “***And they all rhyme with Dominion, or Smartmatic, ES&S all of them***.” (*Scientific Proof*, April 3, 2021 (Exhibit 38).)
- gg. Michael Lindell: “***[T]hese machines where it got hacked, Dominion, Smartmatic, [] all of them are the same***, ES&S. You just say Dominion, but it’s all machines. China hacked into our election and flipped millions upon millions of votes. We have a hundred percent evidence[.]” (*Mike Lindell Tackles Election Fraud*, May 3, 2021 (Exhibit 40).)
- hh. Michael Lindell: “***This was something that came through the machines, the Dominion machines, the Smartmatic and other machines***. This was a cyber attack.” (*Absolutely 9-0*, June 5, 2021 (Exhibit 41).)

185. The statements that were made during the OANN programs were originally published during the programs and then republished when posted to an OANN social media platform. 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). OANN anticipated the republication of its statements. OANN intended for the republication to further disseminate its statements to a larger audience.

186. Individuals who heard and read OANN's statements were led to believe that Smartmatic's election technology and software were (1) widely used during the 2020 U.S. election, including in states with close outcomes and (2) used by Dominion and other voting machine systems during the 2020 U.S. election. OANN intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

187. OANN'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.

188. 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.

189. 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, Wisconsin, or Texas. Smartmatic's election technology and software were not used in any counties in these states.

190. 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, Wisconsin, or Texas (or any counties within these States).

191. 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.

192. Fifth, 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.

193. Sixth, 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 other. They do not work together.

194. Seventh, 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.

B. OANN falsely stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris and the Democratic Party.

195. Persuading people that Smartmatic's election technology and software was widely used was only part of OANN's strategy. To secure viewers, OANN decided to spread the false narrative of election fraud. Given that objective, OANN focused its efforts during the disinformation campaign on persuading people that Smartmatic had fixed, rigged, and stolen the election for Joe Biden and Kamala Harris and Democratic Party candidates generally.

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

- a. Elma Aksalic: “During an interview on Sunday, attorney Sidney Powell said election results in multiple states are quote ‘getting ready to overturn.’ Powell cites an overwhelming amount of evidence the President’s legal team has received concerning voter fraud and irregularities. . . . She specifically noted ***a member of Joe Biden’s team is also on the board of directors for a software company behind the flawed Dominion Voting Systems.***” (News Room, 5AM, November 16, 2020 (Exhibit 2).)
- b. Sidney Powell: “They’re facing ***an election that was absolutely rigged.*** [W]e are soaking in information through fire hoses of ***complicated mathematical alterations to the votes.*** We have identified the system capability that does it. It does in fact exist regardless of what the name of it is. It works through the Dominion company’s voting machines that were in 30 states and does indeed alter and flip voting results.” (News Room, 5AM, November 16, 2020 (Exhibit 2).)
- c. Kara McKinney: “It’s also a convenient lie. Given that Trump attorney Sidney Powell says ***a member of Biden’s transition team is also a member of the board of directors for Smartmatic,*** which is a subsidiary of Dominion.” (Tipping Point, November 16, 2020 (First Video) (Exhibit 3).)
- d. Michael Johns: “[J]ust so happens that ***one of the two campaigns has a very strong relationship with Smartmatic*** and I probably don’t have to ask you to guess which one. But ***we have an individual named Peter Neffenger, who has been handling what’s typically called the landing teams for transitions.***” (Tipping Point, November 16, 2020 (Second Video) (Exhibit 4).)
- e. Rudolph Giuliani: “They certainly ***stole the election in Detroit.*** They certainly ***stole the election in Pennsylvania.***” (News Room, 11PM, November 16, 2020 (Exhibit 5).)
- f. Kara McKinney: “The even bigger issue at play here [is] systemic. For example, the voting system used in around 30 states, Dominion, and its subsidiary Smartmatic. It just so happens that ***a member of Biden’s transition team, Peter Neffenger, is a member of the Board of Directors for Smartmatic.*** The chairman of that company is also a board member for George Soros’ Open Society Foundation. That very same software was used a few years back to rig elections in Venezuela.” (Tipping Point, November 17, 2020 (Exhibit 6).)
- g. Patrick Hussion: “Rudy Giuliani says ***the Democrat Party conspired with socialist regimes overseas to steal this year’s election from the President.*** In a news conference, the President’s legal team said that they have evidence that ***Dominion Voting Systems and the Smartmatic software were used to switch votes from President Trump to Joe Biden.*** They add the technology is controlled by allies of Venezuela’s Maduro regime.” (Breaking News Live, November 19, 2020 (Exhibit 9).)

- h. OAN Newsroom: “The President’s lawyers are weighing in, once again, on *election fraud during the 2020 White House race. While speaking in D.C. Thursday, they claimed votes were hacked and ballots were switched from President Trump to Joe Biden* through technology that was developed in Venezuela.” (OANN Website, *President’s Lawyers Say Communist-Funded Election Software Responsible For Alleged Voting Irregularities*, November 20, 2020 (Exhibit 11).)
- i. Sidney Powell: “[O]ne 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.” (*News Room*, 12AM, November 20, 2020 (Exhibit 14).)
- j. Stephanie Hamill: “Attorney Sidney Powell says the software used in the voting machines across the country can be manipulated to alter vote totals. Now Powell also points out that the *software developed by Smartmatic is tied to major Democrat donor George Soros and the Clinton Foundation.*” (*In Focus with Stephanie Hamill*, November 20, 2020 (Exhibit 17).)
- k. Samantha Lomibao: “This after reports found *Maduro allies were meddling in the latest U.S. election through a company called Smartmatic.*” (*News Room*, 6PM, November 22, 2020 (Exhibit 19).)
- l. Rudy Giuliani: “*Smartmatic, which is the ultimate software, had switched 6,000 votes. It switched 6,000 votes from Trump to Biden.* So the poor people in Michigan that went in to vote for Trump ended up voting for Biden because the machine and the software that originates [] with Venezuela, a dictatorship, changed their vote without their ever knowing it.” (*News Room*, 6PM, November 22, 2020 (Exhibit 19).)
- m. OAN Newsroom: “In both suits, Powell said *the fraud mainly took place in the form of ‘old-fashioned ballot stuffing’* which was rendered ‘virtually invisible’ *by Dominion and Smartmatic’s computer software.*” (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- n. Michael Johns: “The vast amount of investigation, when you’re talking about probably, easily, you know, maybe *close to ten different means through which this election was fraudulently manipulated. The most complicated, of course, which is the Dominion and Smartmatic systems* [.]” (*Tipping Point*, November 28, 2020 (Exhibit 25).)
- o. Kara McKinney: “[E]ven if you want to chalk up all of the glitches, the *ballot errors and other irregularities to simple mistakes, then why do they only go one way? Can anyone name a single time in which these mistakes help President Trump?* It’s a simple question that has been raised time and again in the month since Election Day without any good answers from Democrats. However, *looking at records from the Federal Election*

Commission may explain at least part of the reason for this code of silence. What we find is that 95% of all political contributions made by employees at Dominion Voting Systems between 2014 and 2020 went for Democrats. It's the same story *at Smartmatic, 86% of their employee contributions went to [D]emocrat candidates, specifically to Joe Biden, Senator Elizabeth Warren, Pete Buttigieg, and even to Adam Schiff.*" (*Tipping Point*, December 1, 2020 (Exhibit 27).)

- p. OANN Reporter: "A Sunday report verified that Soros-linked *Smartmatic may be connected to the sale of election technology to Dominion*, which is being used to count votes in at least 24 US states." (*News Room*, 9AM, December 5, 2020 (Exhibit 29).)
- q. OANN Reporter: "This, as the latest in a series of connections between voting systems employed in the US and abroad and *the Soros-linked company, to surface amid emerging evidence of voter fraud in the US presidential election.*" (*News Room*, 9AM, December 5, 2020 (Exhibit 29).)
- r. OAN Newsroom: "*Meanwhile, Smartmatic-tied Dominion voting service is facing backlash over what President Trump has described as instances of fraud in the 2020 elections.* 'In one Michigan County as an example, that used Dominion Systems, they found that nearly 6,000 votes had been wrongly switched from Trump to Biden,' stated the President. 'And this is just the tip of the iceberg, this is what we caught.'" (OANN Website, *Chairman Of Smartmatic's Parent Company To Become President Of George Soros's 'Open Society Foundations'*, December 7, 2020 (Exhibit 30).)
- s. Michael Lindell: "[T]he you know, *the purpose of this whole show, obviously, is to show everyone in the world that these machines that this was the biggest fraud and the biggest crime I believe against humanity.* It was a crime against humanity." (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- t. Michael Lindell: "Could you guys all hear this? This is what we're up against, this Dominion, *these machines is the biggest fraud in election. They stole this.* But now the truth is all going to be revealed." (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- u. Michael Lindell: "This is just a small county, Northern Michigan, and [] we had 15,718 votes. [] *And 7,060 were flipped from Trump to Biden, is that correct? [] By machines right? It had to be done by the machines.* Matt Deperno: *Absolutely by machines.*" (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- v. Michael Lindell: "The machines, the machines. And what we're showing here right now, what you're going to see, all this what we've been talking about, *this massive machine election fraud that went on, where countries hacked into our election.* And nationwide, this is one little county in

Northern Michigan, and *these machines would do it right down to the precinct*... And so what I want to tell you all is this is the perfect example, just so you know, right down to the precinct level, what went on with these machine[s].” (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)

- w. Michael Lindell: “Right, so *both of them involved the machines, everybody*. One we’ve talked about in this show is here. But then the cyber one is what you just heard from Russell, which he said earlier, *this is all the attack by the other countries that hacked in which we’re going to show you that proof now that Russell doesn’t even know that we have that’s going to show who did it, the time they did it, the computer they did it off it, everything*.” (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- x. Michael Lindell: *This was a historical election fraud. This was coming from a lecture [sic] from machines, from these machines, of biblical proportions, of historical proportions. And now this is, it’s all going to get exposed*. (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)
- y. Michael Lindell: “This was an attack on our country, *these Dominion machines and Smartmatic, these machines that were [] the tools of this attack*, and we will never have another fair election if we don’t [] stop that, so I will never back down.” (*A Screening and Conversation of Absolute Proof*, Feb. 11, 2021 (Exhibit 37).)
- z. Michael Lindell: So what are you [] saying there, Dr. Frank, they’re saying that *they’ve set this in the machine . . . That they set to see who was gonna win and they set this algorithm?* Douglas Frank: Yes. Michael Lindell: Okay. These are the algorithms we’ve been telling you about. (*Scientific Proof*, April 3, 2021 (Exhibit 38).)
- aa. Michael Lindell: “*The same thing, the same machines, the same attack, the same people, the same corruption that went on, the same crime against humanity was all, crossed all the states*.” (*Scientific Proof*, April 3, 2021 (Exhibit 38).)
- bb. Michael Lindell: “Talking about ‘*Absolute Proof*’ that documentary we did, where *we have the spyware and these American heroes that were []whistleblowers and stuff that were there and that worked for the government and stuff that, former and present, that were there and they were taking these footprints, these cyber footprints the night of the election, actually, from November 1st to the 5th*. And we have all the IP addresses [] the ID’s of the computers, we have all this of the attacks[.]” Douglas Frank: “Yes. I was on the edge of my seat watching that . . . *But the thing about it is, you’re showing the incursions into the machines but what do they do when they’re there? They have to know what to do. That’s what the algorithm is telling them what to do*.” (*Scientific Proof*, April 3, 2021 (Exhibit 38).)

- cc. Michael Lindell: And it's gonna come out. *And this is all, and that's just another way that, to cheat with these machines.* Michael Flynn: Right. Michael Lindell: *There's actually four ways, maybe even more we don't know about, but these are all the online ways.* (*Absolute Interference*, April 22, 2021 (Exhibit 39).)
- dd. Michael Lindell: “[T]hese machines where it got hacked, *Dominion, Smartmatic*, [] all of them are the same, ES&S. You just say Dominion, but it's all machines. *China hacked into our election and flipped millions upon millions of votes.* We have a hundred percent evidence[.]” (*Mike Lindell Tackles Election Fraud*, May 3, 2021 (Exhibit 40).)
- ee. J. Alex Halderman: *“I know America’s voting machines are vulnerable, because my colleagues and I hacked them repeatedly. We’ve created attacks that can spread from machine to machine like a computer virus and silently change election outcomes.* And in every single case, we’ve found ways for attackers to sabotage machines and to steal votes...” Unknown Speaker: “When you say hacked, what were they able to do once they gained access to the machines? Douglas Lute: All sorts of things, *they could manipulate the outcome of the vote, they could manipulate the tally. They could delete the tally. And they could compromise the vote in any number of ways.*” (*Absolutely 9-0*, June 5, 2021 (Exhibit 41).)

197. The statements that were made during the OANN programs were originally published during the programs and then republished when posted to an OANN social media platform. 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). OANN anticipated the republication of its statements. OANN intended for the republication to further disseminate its statements to a larger audience.

198. Individuals who heard and read OANN’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 and the Democratic Party. OANN intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

199. OANN’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 and the Democratic Party. They were not used to fix the election. They were not used to rig the election. They were not used to steal the election.

200. Second, Smartmatic's election technology and software were used only 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.

201. 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, Wisconsin, or Texas. 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.

202. 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, Wisconsin, or Texas (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.

203. 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.

C. OANN falsely stated and implied that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election and sent votes to foreign countries to be compromised or hacked.

204. OANN was not satisfied with casting Smartmatic as a voluntary and willful participant in a widespread fraud to steal the 2020 U.S. election. OANN also told its viewers and readers that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election. Specifically, OANN told people that Smartmatic's election technology and software has a "back door" and other tools that allow for easy manipulation of votes. OANN also scared its viewers and readers into thinking that Smartmatic sent votes to foreign countries for manipulation during the 2020 U.S. election. The impression that OANN attempted to leave was that U.S. votes were leaving U.S. soil and that this meant that U.S. votes were being manipulated by foreign, anti-U.S. forces.

205. Below are some of the statements that OANN made to create the misimpression that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election and sent votes overseas to be compromised or hacked:

- a. Kara McKinney: "So this begs the question, *why are we using foreign companies to count our votes in the first place, and allowing that information to reportedly flow through servers overseas?* And secondly, if even Democrats knew about these vulnerabilities with Dominion and Smartmatic years before this election, then why did they allow them to be used in so many states? Why didn't more states follow in the lead of Texas in saying no? Perhaps that means they were chosen by election officials precisely because they are so flawed." (*Tipping Point*, November 17, 2020 (Exhibit 6).)

- b. Dan Ball: “[O]bviously *these security folks at Dominion that set up the systems in the individual states, they can just do a little tweak here, a little tweak there to the program. It can make it so minor, to flip votes*, but enough to make your guy win [.]” (*Real America*, November 19, 2020 (Exhibit 10).)
- c. Stephanie Hamill: “[W]hat really stood out to me in the press conference yesterday was Sidney Powell talking about the voting machines, *suggesting that our votes are being counted overseas*, that Dominion Voting Machines and Smartmatic use software that are controlled by foreign interests[.]” (*In Focus with Stephanie Hamill*, November 20, 2020 (Exhibit 17).)
- d. Joe diGenova: “I noticed that Dominion software and its other entities issued a statement today saying they’re not controlled by foreign entities, etc., etc. *They never denied that the votes are actually counted by computers in Frankfurt, Germany and Barcelona, Spain. Ask yourself this question: Why would any state hire a company which is going to have its vote tallies done in Frankfurt, Germany and Barcelona, Spain*, where the tallying cannot be monitored by any American citizen during the process, and where tabulations can be altered without the knowledge of anybody?” (*In Focus with Stephanie Hamill*, November 20, 2020 (Exhibit 17).)
- e. Joe diGenova: “[*T*]hese computer systems have a back door so they can be hacked.” (*In Focus with Stephanie Hamill*, November 20, 2020 (Exhibit 17).)
- f. Kara McKinney: “It [] blows my mind [] that [] years and years of Russia this, Russia that, foreign interference and foreign hacking and meddling in our elections, and then here all these bids go out to foreign-based companies . . . *We hear about some servers possibly overseas, that at some of this data is being routed through*, [] you know what’s going on there? It’s so confusing.” (*Tipping Point*, November 22, 2020 (Exhibit 18).)
- g. Kyle Becker: “It is confusing because [] there are foreign companies that have stations in the United States. [] SGO Smartmatic has been involved in this and they’re from London, they have ties to Venezuela, they’ve been participating in Venezuela. *There are ties to [] Germany, [] election reporting servers going through [] there*. All of this is being denied, but *there’s absolutely zero transparency. These source codes that are used in these [] voting machines are secret and proprietary*[.]” (*Tipping Point*, November 22, 2020 (Exhibit 18).)
- h. OAN Newsroom: “In both suits, Powell said *the fraud mainly took place in the form of ‘old-fashioned ballot stuffing’ which was rendered ‘virtually invisible’ by Dominion and Smartmatic’s computer software* . . . This was possible due to a core design in Smartmatic’s software that allows it to hide any manipulations to votes during an audit. The brain of the

system, called the ‘central accumulator,’ does not provide an audit log that shows the date and time stamps of all inputted data. This allows unauthorized users to add or modify any data stored in tabulation machines with no risk of getting caught.” (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 21).)

- i. Tom Fitton: “I think there’s strong evidence that something went on in Venezuela with the Smartmatic computer system that was used to conduct the election there that Chávez obviously stole. And it’s a fair question to ask whether the—something similar is able to be done in the United States using similar systems, whether it be Smartmatic, or the Dominion version of electronic computer software. ***We’re hearing witness after witness highlight the security weaknesses of these systems.***” (*Breaking News Live*, December 1, 2020 (Exhibit 26).)
- j. Tom Fitton: “And it’s a fair question to ask whether the—something similar is able to be done in the United States using similar systems, whether it be Smartmatic, or the Dominion version of electronic computer software . . . ***the numbers popping up in unusual ways, in Pennsylvania and Michigan, where you get these huge spikes in numbers occurring in the middle of the night.***” (*Breaking News Live*, December 1, 2020 (Exhibit 26).)
- k. Michael Johns: “Look, I think we have to look at ***the Dominion and Smartmatic issues as almost a national crisis.*** We have evidence that is both suggestive and some that is indisputable. ***Affidavits that have been signed as it relates to the technology and its vulnerability.*** And the deeper [] we begin to look into this, ***the more that’s being revealed that’s hugely suggestive of the technical vulnerabilities*** and also the issue of its ownership status[.]” (*Tipping Point*, December 7, 2020 (Exhibit 33).)
- l. Clay Clark: “We all went in and voted [] using hardware, [] called Dominion, the Canadian owned hardware company, that tabulates your votes, has Chinese parts on it. Step two, the software, known as Smartmatic or Sequoia, that software was originally coded out by Communist Venezuelans. Step three, ***for added integrity, your votes were shipped to Frankfurt, Germany, where your votes were stored on Amazon servers.*** And then step four, ***in Barcelona, Spain, the votes were somehow tabulated there, and there was a little feature on the software that allows people to switch votes.***” (*News Room*, 3PM, December 21, 2020 (Exhibit 34).)
- m. Mary Fanning: “Now, red has been the most severe attacks, ***those lines are all coming out of China. Those are the most severe attacks on our election system . . . They knew, in fact that our election machines were open for hacking,*** it’s important to understand that there are prismatic scoring algorithms that they knew about that entered the election, and ***they steal the vote at the transfer points.*** So at the point where the election, the vote is leaving the Secretary of State’s office and these machines, that is the point

at which the vote is stolen at the transfer points.” (*Absolute Proof*, Feb. 5, 2021 (Exhibit 35).)

- n. Michael Lindell: “We have them from November 1 all the way through the election, and ***shows them a massive attack on our country by China*** and other country. ***China did 60% of this. It was all done through Dominion machines and [] Smartmatic machines.***” (*Real America*, Feb. 8, 2021 (Exhibit 36).)
- o. Michael Lindell: “***100% it can only be done by machines.*** I can’t stress that enough.” Douglas Frank: “Absolutely.” Michael Lindell: “***And they all rhyme with Dominion, or Smartmatic ES&S, all of them . . . [W]e have enough evidence that we’re gonna dump for the next six weeks on the whole world and the country that by the time it gets to Supreme Court, everyone’s gonna, they’re all nine going to go 9-0 yes, so our country’s been attacked. We have been attacked by foreign actors, starting with China,*** and with help of domestic actors here that you know, they had to be let in...” (*Scientific Proof*, Apr. 3, 2021 (Exhibit 38).)
- p. Michael Lindell: “***[T]his was 100% an attack by China on our country through these machines.***” (*Absolutely 9-0*, June 5, 2021 (Exhibit 41).)
- q. Michael Lindell: “But I wanted to get on here and explain to everyone, ***this was an attack by China, on our country through these Dominion and these other machines,*** where, and they just hacked in, ***a cyber attack hacked into our election*** and flipped it to everyone, anyone that they wanted to win.” (*Absolutely 9-0*, June 5, 2021 (Exhibit 41).)
- r. Michael Lindell: “This is why, when we say that Donald Trump really won this election by like almost 80 million to 68 million for Biden, how can you switch tens of millions of votes? ***It had to be done with computers, it had to be done with the machines, through these Dominion and through all these machines, and China, China did it.*** It’s a cyber attack of historical proportions.” (*Absolutely 9-0*, June 5, 2021 (Exhibit 41).)

206. The statements that were made during the OANN programs were originally published during the programs and then republished when posted to an OANN social media platform. 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). OANN anticipated the republication of its statements. OANN intended for the republication to further disseminate its statements to a larger audience.

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

208. OANN's statements and implication that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election and sent votes overseas to be compromised or hacked 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, which is the only county where Smartmatic's election technology and software were used during the 2020 U.S. election.

209. Second, Smartmatic's election technology and software does not have a "back door" 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.

210. 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.

211. Fourth, Smartmatic's election technology and software ensures auditability of election results. Auditability 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.

212. Fifth, 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 by election authorities of Los Angeles County in the county.

213. Sixth, 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.

214. Seventh, 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.

215. Eighth, 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 Smartmatic did not tabulate votes, nor did Smartmatic have any servers outside the United States that were involved in the 2020 U.S. election. Smartmatic could not have

stored votes in a foreign-based server for another company during the 2020 U.S. election because no such server exists.

216. Ninth, Smartmatic's election technology and software used in Los Angeles County in the 2020 U.S. election were not connected to the internet. Votes cast using Smartmatic's election technology and software were hand-delivered after paper ballots were printed from Smartmatic's machines. Smartmatic could not have sent votes to a foreign country for manipulation because Smartmatic does not count or tabulate votes; this is done by the election authorities of Los Angeles County. Further, Smartmatic's voting machines in Los Angeles were not connected to the internet.

D. OANN falsely stated and implied that Smartmatic was founded and funded by corrupt dictators from socialist and communist countries.

217. OANN introduced xenophobia into its disinformation campaign. OANN'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 deceased socialist head of Venezuela. And it included stating that Smartmatic received funding from socialist and communist countries like China and Cuba. OANN intended to portray Smartmatic as being linked to socialism and communism to make its role in the 2020 U.S. election appear more nefarious.

218. Below are some of the statements that OANN 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. Mike Dinow: "Report suggests voting machines systems funded by George Soros were *used to install a socialist regime in Venezuela back in the early 2000s*. According to WikiLeaks, *UK based companies Smartmatic had a campaign staffer for Hugo Chávez on its board* back in 2000. Now *the company reportedly meddled with a 2004 Venezuela election to secure a win for the Chávez regime.*" (News Room, 11PM, November 16, 2020 (Exhibit 5).)

- b. On-Screen Graphic: “Report: Soros-Backed Firm Installed Socialism in Venezuela; ***Dominion-Linked Smartmatic Had Chavez Aide on Board***, Sold Rigged Election Tech to U.S. States.” (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)
- c. Mike Dinow: “The Gateway Pundit report also says ***Smartmatic is partially owned by the Maduro regime*** and George Soros.” (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)
- d. Tom Fitton: “[T]he ***Smartmatic system*** [,] the company ***was set up by buddies of Hugo Chavez.***” (*Tipping Point*, November 17, 2020 (Exhibit 6).)
- e. Rudy Giuliani: “***The company counting our vote***, with control over our vote, ***is owned by two Venezuelans who are allies of Chávez.***” (*Breaking News Live*, November 19, 2020 (Exhibit 9).)
- f. Patrick Hussion: “Rudy Giuliani says the Democrat Party ***conspired with socialist regimes overseas to steal this year’s election from the President.*** In a news conference, the President’s legal team said that they have evidence that Dominion Voting Systems and the Smartmatic software were used to switch votes from President Trump to Joe Biden. They add ***the technology is controlled by allies of Venezuela’s Maduro regime.***” (*Breaking News Live*, November 19, 2020 (Exhibit 9).)
- g. On-Screen Graphic: “Giuliani: Dems & Venezuela Used Dominion Software to Steal Election; Say Dominion’s ***Smartmatic Technology Co-Owned by Maduro Regime Allies***, Soros Involved as Well.” (*Breaking News Live*, November 19, 2020 (Exhibit 9).)
- h. OAN Newsroom: “The President’s lawyers are weighing in, once again, on election fraud during the 2020 White House race. While speaking in D.C. Thursday, they claimed votes were hacked and ballots were switched from President Trump to Joe Biden through ***technology that was developed in Venezuela.*** Rudy Giuliani, President Trump’s personal lawyer, said ***the company funding the technology has close ties to known communist leaders. ‘The company counting our vote, with control over our vote, is owned by two Venezuelans who were allies of Chavez or present allies of Maduro,’*** he stated.” (OANN Website, *President’s Lawyers Say Communist-Funded Election Software Responsible For Alleged Voting Irregularities*, November 20, 2020 (Exhibit 11).)
- i. On-Screen Graphic: “President’s Lawyers Claim ***Communist-Funded Election Software*** Responsible for Alleged Voting Irregularities.” (*News Room*, 12AM, November 20, 2020 (Exhibit 14).)
- j. Rudy Giuliani: “***The company counting our vote***, with control over our vote, ***is owned by two Venezuelans who are allies of Chavez, are present***

allies of Maduro[.]” (News Room, 12AM, November 20, 2020 (Exhibit 14).)

- k. OANN Reporter: “Most claims center around the Canadian-made Dominion Voting Systems and the *Venezuelan-made Smartmatic Systems. Sidney Powell says the same technology was used to secure a victory for Hugo Chávez in Venezuela* and could have been used across the country.” (News Room, 12AM, November 20, 2020 (Exhibit 14).)
- l. Kyle Becker: “It is confusing because [] *there are foreign companies that have stations in the United States . . . [T]here’s you know SGO Smartmatic has been involved in this and they’re from London, they have ties to Venezuela*, they’ve been participating in Venezuela.” (Tipping Point, November 22, 2020 (Exhibit 18).)
- m. Samantha Lomibao: “This after *reports found Maduro allies were meddling in the latest U.S. election through a company called Smartmatic.*” (News Room, 6PM, November 22, 2020 (Exhibit 19).)
- n. Rudy Giuliani: “*Smartmatic*, which is the ultimate software, had switched 6,000 votes. It switched 6,000 votes from Trump to Biden. So the poor people in Michigan that went in to vote for Trump ended up voting for Biden because *the machine and the software that originates [] with Venezuela, a dictatorship*, changed their vote without their ever knowing it.” (News Room, 6PM, November 22, 2020 (Exhibit 19).)
- o. Samantha Lomibao: “The [Organization of American States] says *any election that involves Maduro officials is a sham* and must be not recognized by any civilized country.” (News Room, 6PM, November 22, 2020 (Exhibit 19).)
- p. J. Michael Waller: “[W]e have an eyewitness account of an individual who was a trusted confidant of the then Cuban and Russian backed dictator of Venezuela who personally designed the parameters of a software [] whose whole purpose was to manipulate votes to ensure that he would win an election. This is crucial because it’s not just a foreign Banana Republic dictator, this is someone who’s backed by [] Cuban intelligence Secret Service around him and Russian secret police around him, who’s designing this material that American voting tabulation companies used.” (Tipping Point, November 23, 2020 (Exhibit 20).)
- q. Kara McKinney: “[W]ould it be accurate to describe Smartmatic as a shell company? That there’s a lot of players—a lot of the waters here are muddy so you can’t necessarily get back to who owns what? Would that be correct?” J. Michael Waller: “Right, yes, *we do know that it’s owned by two Venezuelan nationals who were aligned with the Venezuelan dictatorship.* We know that much, but the company is hiding who else owns

them, and there's no transparency at all. Yet our own voting officials think it's just fine." (*Tipping Point*, November 23, 2020 (Exhibit 20).)

- r. OAN Newsroom: "In both suits, Powell said the fraud mainly took place in the form of 'old-fashioned ballot stuffing' which was rendered 'virtually invisible' by Dominion and Smartmatic's computer software. According to the attorney, ***both programs were created and funded at the behest of foreign oligarchs, specifically to rig elections.***" (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- s. OAN Newsroom: "***The strategy was first developed and used by Venezuelan Dictator Hugo Chavez to ensure he never lost an election.*** This was possible due to a core design in Smartmatic's software that allows it to hide any manipulations to votes during an audit . . . Smartmatic CEO Antonio Mugica even admitted the software was prone to tampering after ***a similar incident in Venezuela back in 2017.***" (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- t. Michael Johns: "[C]lose to ten different means through which this election was fraudulently manipulated. The ***most complicated, of course, which is the Dominion and Smartmatic systems*** . . . [A]nd to go out and acquire this system, knowing its history, ***knowing its attachment [and] association with the dictatorship in Venezuela*** and the use that it played in the Argentina manipulations[,] in the Philippines and elsewhere, including in Chicago, is an inexcusable decision." (*Tipping Point*, November 28, 2020 (Exhibit 25).)
- u. Tom Fitton: "I think there's strong evidence that ***something went on in Venezuela with the Smartmatic computer system that was used to conduct the election there that Chávez obviously stole.*** And it's a fair question to ask whether the—something similar is able to be done in the United States using similar systems, whether it be Smartmatic, or the Dominion version of electronic computer software. We're hearing witness after witness highlight the security weaknesses of these systems." (*Breaking News Live*, December 1, 2020 (Exhibit 26).)
- v. Kara McKinney: "So here you have Dominion, which is a foreign-owned company and uses computer chips made in China, ***and Smartmatic, which has ties to Soros and the Castro regime in Venezuela,*** involved in US elections." (*Tipping Point*, December 1, 2020 (Exhibit 27).)
- w. Tom Fitton: "I'm not at all confident that our election security is secure enough, in terms of someone on the inside, being able to manipulate the systems. [] [W]hat was very interesting about being reporting, before the election, that ***Chavez had manipulated the election results using electronic computer systems, named—namely Smartmatic, in Venezuela.*** And it's a fair question to ask whether those results, whether results using similar

systems could be similarly manipulated.” (*In Focus with Stephanie Hamill*, December 3, 2020 (Exhibit 28).)

- x. OANN Reporter: “Meantime, *Smartmatic has faced controversy in the past with allegations of rigging the 2013 election in Venezuela, on behalf of embattled socialist President Nicolás Maduro.*” (*News Room*, 9AM, December 5, 2020 (Exhibit 29).)
- y. OAN Newsroom: “Smartmatic has faced controversy in the past with allegations of *rigging the 2013 election in Venezuela to favor socialist President Nicolas Maduro.*” (OANN Website, *Chairman Of Smartmatic’s Parent Company To Become President Of George Soros’s ‘Open Society Foundations’*, December 7, 2020 (Exhibit 30).)
- z. Clay Clark: “We all went in and voted [] using hardware, [] called Dominion, the Canadian owned hardware company, that tabulates your votes, has Chinese parts on it. Step two, *the software, known as Smartmatic or Sequoia, that software was originally coded out by Communist Venezuelans.* Step three, for added integrity, your votes were shipped to Frankfurt, Germany, where your votes were stored on Amazon servers. And then step four, in Barcelona, Spain, the votes were somehow tabulated there, and there was a little feature on the software that allows people to switch votes.” (*News Room*, 3PM, December 21, 2020 (Exhibit 34).)

219. The statements that were made during the OANN programs were originally published during the programs and then republished when posted to an OANN social media platform. 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). OANN anticipated the republication of its statements. OANN intended for the republication to further disseminate its statements to a larger audience.

220. Individuals who heard and read OANN’s statements were led to believe that Smartmatic was founded and funded by corrupt dictators from socialist and communist countries. OANN intended for individuals who heard or read its statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

221. OANN’s statements and implication that Smartmatic 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.

222. 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 a 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.

223. 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. No member of Hugo Chávez's administration sat on Smartmatic's Board or in any other position for Smartmatic.

224. 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 (nor thereafter). Smartmatic has not provided election technology or software in connection with any election in China or Cuba.

225. Fifth, Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology and software in Venezuela after the government announced total vote counts that differed from the actual vote count. Smartmatic publicly revealed that the Venezuelan government had announced an inflated total vote count in 2017.

E. OANN falsely stated and implied that Smartmatic's election technology and software were designed to and have fixed, rigged, and stolen elections before.

226. OANN was not content portraying Smartmatic as having stolen the 2020 U.S. election. OANN decided to indict everything the company had done for the last twenty years. OANN portrayed Smartmatic and its products as serving only one function: fixing, rigging, and stealing elections. OANN went as far as to accuse Smartmatic of having rigged elections in other

countries prior to the 2020 U.S. election. OANN added credibility to its 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 and that Smartmatic has successfully done this before.

227. Below are some of the statements that OANN made to create the impression that Smartmatic's election technology and software were designed to fix, rig, and steal elections and have been used to fix, rig, and steal elections before:

- a. Alex Salvi: "The Washington Examiner reporting this week quote '*the Dominion voting systems*, which has been used in multiple state where fraud has been alleged in the 2020 U.S. election, *was rejected three times by data communications experts from the Texas Secretary of State and Attorney General's Office for failing to meet basic security standards.*' *But it's not only Dominion. It's also Dominion's subsidiaries, such as Smartmatic* which was used for the Philippines elections back in 2010 and 2013.'" (After Hours, November 12, 2020 (Exhibit 1).)
- b. Elma Aksalic: "*Powell says the software dubbed Smartmatic was designed for the sole purpose of shifting voting results.*" Sidney Powell: "*It's a feature of the system that was designed with a backdoor so that people could watch in real time and calculate with an algorithm how many votes they needed to change to make the result they wanted to create.*" (News Room, 5AM, November 16, 2020 (Exhibit 2).)
- c. Kara McKinney: "It's also a convenient lie. Given that Trump attorney, Sidney Powell, says a member of Biden's transition team is also a member of the board of directors for Smartmatic, which is a subsidiary of Dominion. Small world I guess. *Powell claims to have evidence that proves the software was designed to rig elections.*" (Tipping Point, November 16, 2020 (First Video) (Exhibit 3).)
- d. Mike Dinow: "Report suggests voting machines systems funded by George Soros were *used to install a socialist regime in Venezuela back in the early 2000s*. According to WikiLeaks, UK based companies Smartmatic had a campaign staffer for Hugo Chávez on its board back in 2000. Now *the company reportedly meddled with a 2004 Venezuela election to secure a win for the Chávez regime.*" (News Room, 11PM, November 16, 2020 (Exhibit 5).)
- e. On-Screen Graphic: "Report: Soros-Backed Firm Installed Socialism in Venezuela; Dominion-Linked Smartmatic Had Chavez Aide on Board, Sold

Rigged Election Tech to U.S. States.” (*News Room*, 11PM, November 16, 2020 (Exhibit 5).)

- f. Kara McKinney: “The even bigger issue at play here [is] systemic. For example, *the voting system used in around 30 states, Dominion, and its subsidiary Smartmatic*. It just so happens that a member of Biden’s transition team, Peter Neffenger, is a member of the Board of Directors for Smartmatic. The chairman of that company is also a board member for George Soros’ Open Society Foundation. *That very same software was used a few years back to rig elections in Venezuela.*” (*Tipping Point*, November 17, 2020 (Exhibit 6).)
- g. Evi Kokalari-Angelakis: “[I]n 2016 Hillary Clinton was so sure she was going to win. *The only reason she was so sure she was going to win is because they knew Dominion and the software [] Smartmatic was in existence, and that’s how they were going to get the election.* They just didn’t expect—they didn’t realize how many Americans were going to vote for Donald Trump, and that’s how they probably lost that election.” (*Real America*, November 19, 2020 (Exhibit 10).)
- h. Dan Ball: “[O]bviously these security folks at Dominion that *set up the systems in the individual states, they can just do a little tweak here, a little tweak there to the program. It can make it so minor, to flip votes, but enough to make your guy win* that hopefully it’s not noticeable[.]” (*Real America*, November 19, 2020 (Exhibit 10).)
- i. OANN Reporter: “Most claims center around the Canadian-made Dominion Voting Systems and the Venezuelan-made Smartmatic Systems. Sidney Powell says the same *technology was used to secure a victory for Hugo Chávez in Venezuela* and could have been used across the country.” (*News Room*, 12AM, November 20, 2020 (Exhibit 14).)
- j. Sidney Powell: “[O]ne 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.” (*News Room*, 12AM, November 20, 2020 (Exhibit 14).)
- k. Keith Trippie: “One of the things I’d love to see Sidney [Powell] and Rudy [Giuliani] do is, they need to talk to both over at Dominion and over at Smartmatic. Who were the product managers, who were the lead engineers, who were the lead developers and who were the lead testers? Those are all people directly involved in what software features are made available and testing those features before they’re out. *One of the things I would want to know is, can you change a vote? Whether it’s inside the company on the software or out at a state location where these machines are.*” (*News Room*, 6AM, November 20, 2020 (Exhibit 15).)

- l. Allan Santos: “And not only this, the Smartmatic company also used to work with Dominion, the company system that you are using here. But it’s weird how they operate . . . **[B]ack [in] 2018 [in Brazil], one candidate was leading, and then it stopped counting. And after an hour or after 40 minutes, something like that, everything changed. And I saw that here. And I can assure you, communists love fraud election. They love to do fraud[.]**” (News Room, 3PM, November 20, 2020 (Exhibit 16).)
- m. On-Screen Graphic: “Trump Attorney Sidney Powell: **Voting Software ‘Designed to Rig Elections’**” (In Focus with Stephanie Hamill, November 20, 2020 (Exhibit 17).)
- n. Kara McKinney: “[S]o when it comes to this affidavit from the former Venezuelan bodyguard, what stood out to you the most?” J. Michael Waller: “What stood out was we have an eyewitness account of an individual who was a trusted confidant of the then Cuban and Russian backed **dictator of Venezuela, who personally designed the parameters of a software [] whose whole purpose was to manipulate votes to ensure that he would win an election.** This is crucial because it’s not just a foreign Banana Republic dictator, this is someone who’s backed by [] Cuban intelligence Secret Service around him and Russian secret police around him who’s designing this material that American voting tabulation companies used.” (Tipping Point, November 23, 2020 (Exhibit 20).)
- o. OAN Newsroom: “In both suits, Powell said the fraud mainly took place in the form of ‘old-fashioned ballot stuffing’ which was rendered ‘virtually invisible’ by Dominion and Smartmatic’s computer software. **According to the attorney, both programs were created and funded at the behest of foreign oligarchs, specifically to rig elections.**” (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- p. OAN Newsroom: “The strategy was first developed and used by Venezuelan Dictator Hugo Chavez to ensure he never lost an election. This was possible due to a core design in Smartmatic’s software that allows it to hide any manipulations to votes during an audit . . . **Smartmatic CEO Antonio Mugica even admitted the software was prone to tampering after a similar incident in Venezuela back in 2017.**” (OANN Website, *Sidney Powell Launches Election Lawsuits in Mich. And Ga.*, November 27, 2020 (Exhibit 22).)
- q. OAN Newsroom: “This was possible due to **a core design in Smartmatic’s software that allows it to hide any manipulations to votes during an audit.** The brain of the system, called the ‘central accumulator,’ does not provide an audit log that shows the date and time stamps of all inputted data. This allows unauthorized users to add or modify any data stored in tabulation machines with no risk of getting caught.” (OANN Website, *Sidney Powell*

Launches Election Lawsuits in Mich. And Ga., November 27, 2020 (Exhibit 22).)

- r. Michael Johns: “[C]lose to ten different means through which this election was fraudulently manipulated. The most complicated, of course, of which is the Dominion and Smartmatic systems . . . ***[C]an you point to any election anywhere in the world where these systems were utilized—or even in the United States, in Chicago [] where it has not been a factor in systematic electoral fraud? [] [T]his is an enormous, enormous troubling system. . . . [A]nd to go out and acquire this system knowing its history, knowing its attachment [and] association with the dictatorship in Venezuela and the use it played in the Argentina manipulations[,] in the Philippines and elsewhere, including in Chicago, is an inexcusable decision.***” (*Tipping Point*, November 28, 2020 (Exhibit 25).)
- s. Tom Fitton: “[I]’m not at all confident that our election security is secure enough, in terms of someone on the inside, being able to manipulate the systems. [] [W]hat was very interesting about being reporting, before the election, that ***Chavez had manipulated the election results using electronic computer systems, named—namely Smartmatic, in Venezuela.*** And it’s a fair question to ask whether those results, whether results using similar systems could be similarly manipulated.” (*In Focus with Stephanie Hamill*, December 3, 2020 (Exhibit 28).)
- t. OANN Reporter: “Meantime, ***Smartmatic has faced controversy in the past with allegations of rigging the 2013 election in Venezuela***, on behalf of embattled socialist President Nicolás Maduro.” (*News Room*, 9AM, December 5, 2020 (Exhibit 29).)
- u. OAN Newsroom: “Smartmatic has faced controversy in the past with allegations of ***rigging the 2013 election in Venezuela to favor socialist President Nicolas Maduro.***” (OANN Website, *Chairman Of Smartmatic’s Parent Company To Become President Of George Soros’s ‘Open Society Foundations’*, December 7, 2020 (Exhibit 30).)
- v. Michael Johns: “Look, I think we have to look at the Dominion and ***Smartmatic*** issues as almost a national crisis . . . [W]e had 28 states and 2000 jurisdictions in this country, who looked at all of the available options, and mysteriously concluded that this system was the best option available to them, when there was abundant information available, including ***multiple reports issued by the state of Texas, regarding its susceptibility to manipulation, and remote and in person vote manipulation.***” (*Tipping Point*, December 7, 2020 (Exhibit 33).)

228. The statements that were made during the OANN programs were originally published during the programs and then republished when posted to an OANN social media

platform. 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). OANN anticipated the republication of its statements. OANN intended for the republication to further disseminate its statements to a larger audience.

229. Individuals who heard and read OANN's statements were led to believe that Smartmatic's election technology and software were designed to fix, rig, and steal elections and that Smartmatic had, in fact, fixed, rigged, or stolen elections before. OANN intended for individuals who heard or read their statements to draw that conclusion. That conclusion was an important component of the disinformation campaign.

230. OANN's statements and implication that Smartmatic's election technology and software were designed to fix, rig, and steal elections and have been used for that purpose before 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.

231. 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 have not been used to fix, rig, or steal any of those elections.

232. 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.

233. 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.

234. Fifth, Smartmatic ceased participating in elections in Venezuela in 2017. Smartmatic ceased to provide election technology and software in Venezuela after the government announced total vote counts that differed from the actual vote count. Smartmatic publicly revealed that the Venezuelan government had announced an inflated total vote count in 2017.

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

236. Seventh, Smartmatic's election technology and software did not fix, rig, or steal any election in the Philippines. Every audit of an election in the Philippines using Smartmatic's election technology and software has confirmed the election was not fixed, rigged, or stolen.

237. Eighth, Smartmatic has never been banned or disqualified in Texas. Other voting companies may have been banned or disqualified in Texas, but not Smartmatic.

IV. OANN Acted with Actual Malice and Ill Will Towards Smartmatic⁸

238. OANN knew that the statements and implications that it made about Smartmatic were false and/or it acted with reckless disregard regarding whether its statements and implications

⁸ Smartmatic's discussion of OANN's actual malice is not an admission that Smartmatic must allege and prove OANN acted with actual malice to establish liability or recover damages.

were true. OANN did not care about making truthful statements about Smartmatic. OANN was motivated to tell a false story about how Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris.

239. OANN's actual malice with respect to its statements and implications about Smartmatic is illustrated by the following facts:

- OANN had no basis for its statements about Smartmatic's role in the 2020 U.S. election.
- OANN had obvious reasons to doubt what it was saying about Smartmatic outside of the 2020 U.S. election because it had seen no evidence to support what it was saying.
- OANN had obvious reasons to doubt Ms. Powell's and Mr. Giuliani's veracity and the veracity of its many other guests, including Mr. Lindell, because no guest ever provided the "evidence" they claimed to have about Smartmatic, which confirmed none existed.
- OANN possessed or had access to a significant volume of information that contradicted the story it published about Smartmatic. OANN either reviewed this information (and therefore knew its statements and implications were false) or purposefully avoided reviewing this information because it did not want to know the truth.

240. OANN also acted with ill will towards Smartmatic. OANN did not mind destroying Smartmatic's reputation because doing so served its financial interests. For OANN, this was not about providing fair and neutral reporting of a debate. OANN did not even try to do that. Instead, this was about destroying a company that OANN decided to portray as foreign and corrupt so it could secure more viewers and more "clicks" to its website and social media posts. OANN sought to profit from Smartmatic's ruin.⁹

⁹ As noted above, references to "OANN" include its anchors, hosts, and producers. The allegations that follow, which discuss how "OANN" acted with actual malice, should be read and understood to include the anchors, hosts, and producers of the shows at issue. Those anchors, hosts, and producers knew they lacked evidence to support what they were publishing, and these individuals reviewed and/or had access to information showing that what they published was not accurate.

A. OANN had no support for its statements and implications regarding Smartmatic.

241. OANN spread a story about Smartmatic and its election technology and software that OANN knew was fabricated.

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

242. There is one irrefutable fact that undermines nearly everything that OANN said about Smartmatic during its 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 OANN or readily ascertainable, and it puts the lie to nearly everything it said.

243. OANN 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. OANN did not have any source for this statement and implication because Smartmatic's election technology and software were only used in Los Angeles County.

244. OANN stated and implied that Dominion used Smartmatic's election technology and software during the 2020 U.S. election. OANN 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.

245. OANN stated and implied that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe Biden and Kamala Harris and the Democratic Party. OANN did not have any source or evidence for this statement and implication because Smartmatic's election technology and software were not used in any state other than California and were not used in any of the states with close outcomes.

246. OANN stated and implied that Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election and sent votes overseas to be compromised

or hacked. OANN did not have any source for this statement and implication because (1) there were no cyber-security concerns with the election in Los Angeles County and (2) the votes in Los Angeles County were counted and tabulated by election authorities of Los Angeles County in the county.

247. OANN's disinformation campaign was not limited to distorting Smartmatic's role in the 2020 U.S. election. OANN also defamed and made injurious falsehoods about Smartmatic by lying about the company's past. OANN had no basis for these statements and implications either.

248. OANN stated and implied that Smartmatic is a Venezuelan company founded and funded by corrupt dictators from socialist and communist countries. OANN did not have any source identifying Smartmatic as a Venezuelan company because it is not. OANN 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.

249. OANN stated and implied that Smartmatic's election technology and software were designed to fix, rig, and steal elections, and that Smartmatic had done exactly that in prior elections. OANN did not have any source with firsthand knowledge to support this statement and implication because it never happened.

2. OANN purposefully avoided learning the truth about Smartmatic and its election technology and software.

250. To the extent OANN did not know the truth, OANN purposefully avoided learning the truth about Smartmatic and its election technology and software, establishing actual malice.

251. First, OANN intentionally avoided obtaining information from Smartmatic. No one from OANN ever contacted Smartmatic to verify any statements it made or published. Smartmatic's website includes a "Contact" page that provides addresses, phone numbers, and

email addresses through which OANN could have used to contact Smartmatic. The “Contact” page also provides a specific link for “Media Inquiries.” OANN did not care to get Smartmatic’s response to its statements about Smartmatic. OANN was pushing a preconceived story and it did not want factual information from Smartmatic to contradict its story.

252. Second, OANN allowed a myriad of guests to appear on its various news programs and make false statements and implications about Smartmatic without showing any proof or evidence for those statements. OANN did not require its guests to provide proof or evidence for their statements. OANN also knew that its “investigation” did not verify the veracity of the statements and implications it published. OANN purposefully avoided requiring its guests to prove what they were saying because OANN selected the guests who would make unsubstantiated lies.

253. Third, OANN did not interview anyone with personal knowledge of Smartmatic’s involvement in the 2020 U.S. election or the allegations being made about Smartmatic. OANN’s guests did not have any role in the 2020 U.S. election. They did not work with Smartmatic, Dominion, or any other voting machine technology. They did not work at the polls on election day. They were not involved with Smartmatic’s voting technology and software used in Los Angeles County. OANN let whoever it wanted, regardless of a clear lack of personal knowledge, appear on OANN shows and make false statements and implications about Smartmatic. OANN purposefully avoided inviting guests with personal knowledge of Smartmatic’s 2020 U.S. election to appear on OANN because those guests would have contradicted the preconceived story being told by OANN. Nor did OANN invite any guests to claim exactly the opposite.

254. Fourth, OANN purposefully avoided election technology experts. For instance, Fox News repeatedly broadcast statements from Eddie Perez, the Global Director at the Open Source Election Technology Institute. On information and belief, OANN followed Fox News’s coverage of Smartmatic after the election. So OANN was aware of Mr. Perez and avoided him and other

experts because the facts they would have offered were inconsistent with the story OANN wanted to convey about Smartmatic. Despite being aware of Mr. Perez's appearances on Fox News, OANN continued publishing false statements and implications about Smartmatic after Mr. Perez's appearances. Mr. Perez first appeared on Fox News on December 18, 2020. OANN published false statements and implications about Smartmatic on December 21, 2020 and throughout 2021.

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

255. OANN knew its statements and implications regarding Smartmatic and its technology and software were false, or it acted with reckless disregard for the truth when making its statements. OANN possessed and/or had access to information that showed its statements were false. OANN also made statements for which it had no factual basis.

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

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

257. 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, Nevada, and Texas.

258. 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 OANN.

259. 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 55).) 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 56); 8/9/19 Office of Georgia Secretary of State Certification for Dominion Voting System (Exhibit 52).)

260. 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 59).) 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, *False claims from Ronna McDaniel have no merit* (Exhibit 60).) 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 58).)

261. 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 62).) 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 State Tells Counties To Have New Voting Systems In Place By End Of 2019* (Exhibit 63).) 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 62).) 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 64).)

262. Arizona: The state of Arizona publicly identified the election technology and software used for the 2020 U.S. election by manufacturer on its website. Smartmatic was not one of them. (Arizona Secretary of State, *2020 Election Cycle/Voting Equipment* (Exhibit 67).)

263. 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 69).) 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 70).)

264. 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 72).)

265. Texas: The state of Texas publicly identified the election technology and software certified for use on the website of the Secretary of State, VoteTexas.gov. The website identifies Dominion, ES&S, and Hart InterCivic as certified for use in Texas election. (VoteTexas.gov, *How to Vote* (Exhibit 135).) Smartmatic was not identified. Furthermore, the Texas Secretary of State's website makes clear 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. (Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 136).)

266. 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 Chicago Tribune, *U.S. election integrity depends on security-challenged firms* (Exhibit 99); 10/29/18 Fox Business, *Security-challenged firms are gatekeepers of US elections* (Exhibit 100).)
- 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 101).)

- c. On December 6, 2019, Senators Elizabeth Warren, Amy Klobuchar, and others sent letters to the private equity firms that owned or had investments in the vendors responsible for the “vast majority of voting machines and 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 105).) 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 of the country votes on machines made by ES&S. (10/28/19 ProPublica, *The Market for Voting Machines is Broken. This Company Has Thrived in It* (Exhibit 103).)
- 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, *Trips to Vegas and Chocolate-Covered Pretzels: Election Vendors Come Under Scrutiny* (Exhibit 102).)
- 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, *Playbook PM: Halftime* (Exhibit 112).)
- 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 The Wall Street Journal, *Early Voting Shines Spotlight on Consolidated Voting-Equipment Market* (Exhibit 110).)

267. 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.

268. Third, each major company or manufacturer of election technology and software identified on its own website the use of its technology or software in the 2020 U.S. election before and during the disinformation campaign. This information 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:

269. ES&S: Before and during the disinformation campaign, ES&S's website provided information that contradicted statements by OANN about the use of Smartmatic's election technology in the 2020 U.S. election. For example, ES&S's website identified the widespread 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, *Getting the facts straight about elections* (Exhibit 87); 11/11/20 ES&S, *ES&S Equipment Efficiently, Accurately, Securely Records Election History* (Exhibit 88); 11/26/20 ES&S, *Getting the facts straight about elections updated* (Exhibit 89).)

270. Hart InterCivic: Before and during the disinformation campaign, Hart InterCivic's website provided information that contradicted statements by OANN about the use of Smartmatic's election technology in the 2020 U.S. election. For example, Hart InterCivic's website identified the widespread use of its technology systems in the country. (9/25/20 Hart InterCivic, *Voting System Security Technology* (Exhibit 90); 9/28/20 Hart InterCivic, *More Texas Counties Choose Hart InterCivic's Verity Voting* (Exhibit 91).)

271. Dominion: Before and during the disinformation campaign, Dominion's website provided information that contradicted statements by OANN 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, *About Dominion* (Exhibit 79).)

272. 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 Los 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, *Smartmatic Fact-checked* (Exhibit 75).)

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, *Smartmatic Fact-checked* (Exhibit 76).)

273. On information and belief, OANN was aware of the factual information on 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.

274. On information and belief, OANN was 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, Los Angeles County's risky voting experiment* (Exhibit 106).)

275. Fifth, OANN did not attempt to email Smartmatic to obtain basic information, such as its role in the 2020 U.S. election or its relationship to Dominion or other voting systems. OANN could have easily emailed Smartmatic. It is telling that OANN avoided getting this type of information from the company.

276. Sixth, on December 18, 2020, Dominion sent a retraction demand letter to OANN and its executive officers, including Robert Herring (CEO), Charles Herring (President), and Bruce Littman (Executive Vice President). (Dominion Retraction Demand Letters to OANN (Exhibit 48).) The December 18, 2020 letter included information demonstrating that the claims OANN had been broadcasting and publishing about Smartmatic were false. For example, the letter included the following information:

- a. “Dominion is not Smartmatic,” “is not owned by Smartmatic,” and “Dominion and Smartmatic are entirely separate companies who compete against each other”;
- b. “Dominion does not use Smartmatic’s software or machines, nor was there Smartmatic technology in any of Dominion’s voting machines in the 2020 election”;
- c. A link to a statement by the Chairman of Maricopa County Board of Supervisors that “the system used in Maricopa County is accurate and provided voters with a reliable election”;
- d. A link to a statement by Georgia Secretary of State Brad Raffensperger that “the state’s new secure paper ballot voting system accurately counted and reported results” in Georgia.

277. In all, beginning on December 18, 2020—and repeatedly thereafter, including but not limited to, December 22, 2020, December 29, 2020, February 4, 2021, February 12, 2021, April 16, 2021, May 12, 2021, June 18, 2021, July 13, 2021, and August 4, 2021—Dominion sent OANN correspondence detailing OANN’s defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were factually inaccurate, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

278. Seventh, 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.

279. For example, all of the states where OANN claimed fraud had occurred use some aspect of the federal testing and certification program for election technology and software. (NCSL

Voting System Standards, *Testing and Certification* (Exhibit 131).) 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, *Voting Systems by Jurisdiction* (Exhibit 132).)

280. Eighth, 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, *The Verifier—Search—November 2020* (Exhibit 133).)

281. Ninth, before and during the disinformation campaign, there was publicly available and easily accessible information that shows Smartmatic and Dominion are two separate companies. 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 108); 6/25/10 Dominion Voting Systems, Inc. Statement of Foreign Entity Authority filed with Colorado Secretary of State (Exhibit 93).)

282. There was also litigation between the companies, and the public filings clearly establish that the companies are separate, they are competitors, and their technology is separate. (9/18/12 Smartmatic Press Release, *Smartmatic International Sues Dominion Voting Systems for Licensing Breach and Improper Business Practices* (Exhibit 95); 5/1/13 Mem. Opinion,

Smartmatic Int'l Corp. v. Dominion Voting Systems Int'l Corp., No. 7844-VCP (Del. Chan. 2013) (Exhibit 97).)

283. Tenth, 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 Smartmatic's first and 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, *Smartmatic Fact-checked* (Exhibit 77).)

284. Eleventh, Dominion's website similarly provided information that made clear it was a distinctly separate company from, and fierce competitor to Smartmatic, and was not using Smartmatic's election technology and software. (11/13/20 Dominion, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 81); 11/17/20 Dominion, *Election 2020: Setting the Record Straight, Facts & Rumors* (Exhibit 82); 11/25/20 Dominion, *Election 2020: Setting the Record Straight, Facts & Rumors* (Exhibit 84); 11/26/20 Dominion, *Election 2020: Setting the Record Straight, Facts & Rumors* (Exhibit 85); 12/3/20 Dominion, *Election 2020: Setting the Record Straight, Facts & Rumors* (Exhibit 86).)

285. Twelfth, Smartmatic sent OANN a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46).) The 14-page letter identified some of OANN's false statements that Smartmatic's election technology and software were widely used, including in Dominion's voting machine systems, in the 2020 U.S. election and explained why those statements were false.

286. Thirteenth, Smartmatic filed suit against Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell on

February 4, 2021. (*Smartmatic USA Corp., et al. v. Fox Corporation et al.*, Index No. 151136/2021 (N.Y. Sup. Ct. 2021) (“Fox Complaint”) (Exhibit 148).) Smartmatic’s Fox Complaint laid out all of the above facts establishing that Smartmatic’s election technology and software were only used in Los Angeles County, were not used in any battleground states, and were not used by Dominion or any other voting machine system in the 2020 U.S. election.

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

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

288. 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 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, *Smartmatic Fact-checked* (Exhibit 77); Smartmatic, *Los Angeles County—Voting Solutions for All People* (Exhibit 117).)

289. 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.

290. 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.

291. 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 104).) No such threats were identified or reported by any of these agencies. Unsurprisingly, OANN had seen no evidence contradicting the joint statement by the national security agencies. OANN does not have more resources than the federal government and did not have access to information that the federal government had not reviewed.

292. 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 official 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.

293. 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:

294. 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, *Republican Party Prepares Lawyers for Election Day Legal Battles*; *President Trump Accuses FDA of Playing Politics*; *Interview with Sen. Tammy Duckworth* (Exhibit 109).)

295. 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 113).)

296. 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 111).)

297. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a definitive statement that “[t]he November 3rd election was the most secure in American history.” It further stated, “[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” And “[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission’s (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020.” (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* (Exhibit 119).)

298. 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 122).)

299. 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 124).)

300. 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 128).)

301. 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 News, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 129).)

302. 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:

303. 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 53); *see also* 11/19/20 Georgia Secretary of State, *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Exhibit 54) (“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.”).)

304. 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 supporters 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 55).)

305. 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 election 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 57).)

306. Michigan: Michigan’s Bureau of Election made information about its election security available on its website, www.Michigan.gov/ElectionSecurity, including that “[t]here is no evidence voting machines in Michigan have ever been compromised or that votes have been changed.” (1/5/21 Michigan Secretary of State, *Michigan’s election was secure and fair, and the results are accurate* (Exhibit 61).)

307. 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.” (Tweet, @GovernorTomWolf, November 12, 2020 (Exhibit 65).)

308. 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 66).)

309. 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.” (Tweet, @DougDucey, December 1, 2020 (Exhibit 68).)

310. 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 Flip Votes from Trump to Biden* (Exhibit 71).)

311. 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 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 Steve Sisolak, *Governor Sisolak issues statement on President Trump’s comments on the election* (Exhibit 73).)

312. 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 74).)

313. 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 The New York Times, *The Times Called Officials in Every State: No Evidence of Voter Fraud* (Exhibit 115).)

314. 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, *Statement on Viral Claims/Rumors About Dominion Voting Systems* (Exhibit 80).)

315. On November 13, 2020, Dominion’s website included a page to set the record straight, including that the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) has debunked claims of voter fraud. It further stated “[n]o credible reports or evidence of any software issues exist. While no election is without isolated issues, Dominion Voting Systems are reliably and accurately counting ballots. State and local officials have publicly confirmed the integrity of the process.” (11/13/20 Dominion, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 81); 11/17/20 Dominion, *Setting the Record Straight, Facts & Rumors* (Exhibit 82); 12/3/20 Dominion, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 86).)

316. Sixth, on December 18, 2020, Dominion sent a retraction demand letter to OANN and its executive officers, including Robert Herring (CEO), Charles Herring (President), and Bruce Littman (Executive Vice President). (Dominion Retraction Demand Letters to OANN (Exhibit 48).) The December 18, 2020 letter included information demonstrating that the claims OANN had been broadcasting and publishing about Smartmatic were false. For example, the letter included the following information:

- a. That the “vote counts from Dominion’s machines have been verified by independent audits and recounts of paper ballots”;

- b. CISA's November 12 statement that there was "no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised";
- c. A link to a statement by fifty-nine "specialists in election security" that "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";
- d. A link to a statement by the Chairman of Maricopa County Board of Supervisors that "the system used in Maricopa County is accurate and provided voters with a reliable election;"
- e. A link to a statement by Georgia Secretary of State Brad Raffensperger that "the state's new secure paper ballot voting system accurately counted and reported results" in Georgia.

317. In all, beginning on December 18, 2020—and repeatedly thereafter, including but not limited to, December 22, 2020, December 29, 2020, February 4, 2021, February 12, 2021, April 16, 2021, May 12, 2021, June 18, 2021, July 13, 2021, and August 4, 2021—Dominion sent OANN correspondence detailing OANN's defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were factually inaccurate, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

318. Seventh, Smartmatic sent OANN a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46).) The 14-page letter identified some of OANN's false statements that Smartmatic fixed, rigged, and stole the 2020 U.S. election for Joe

Biden and Kamala Harris and the Democratic Party and explained why those statements were false.

319. Eighth, Smartmatic filed suit against Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell on February 4, 2021. (Fox Complaint (Exhibit 148).) Smartmatic's Fox Complaint laid out all of the above facts establishing that Smartmatic's election technology and software were not used to fix, rig, or steal the 2020 U.S. election.

3. OANN knew that Smartmatic's election technology and software were not compromised or hacked during the 2020 U.S. election and did not send votes overseas to be compromised or hacked.

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

321. 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. OANN 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). 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.

322. 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 Smartmatic's website. There are no reports that Smartmatic's election technology and software had been compromised or hacked. (11/11/20 Smartmatic, *Los Angeles County—Voting Solutions for All People* (Exhibit 117); 11/10/20 Los Angeles Times, *L.A.'s \$300-million voting systems gets high marks as votes trickle in across California* (Exhibit 116).)

323. 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, which 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 voting 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 49); 12/15/20 California Secretary of State, *Voting Technologies Approved for Use in California* (Exhibit 51).)

324. 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 an "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." Secretary Padilla said that the system

underwent functional testing and source code review, among other things, and that California's Voting System Standards exceeded 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 50).)

325. 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 114).)
- b. On November 12, 2020, the U.S. Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees issued a joint statement that "[t]he November 3rd election was the most secure in American history. Right now, across the country, election officials are reviewing and double checking the entire election process prior to finalizing the result." It further stated, "[t]here is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised." And "[o]ther security measures like pre-election testing, state certification of voting equipment, and the U.S.

Election Assistance Commission's (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020."

"While we know there are many unfounded claims and opportunities for misinformation about the process of our elections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too." (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Counsel & the Election Infrastructure Sector Coordinating Executive Committees* (Exhibit 119).)

- 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 Committees* (Exhibit 119).)
- d. On December 1, 2020, Attorney General Barr specifically addressed OANN'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 News, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 129).)

326. 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 134).)

327. 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, *Smartmatic Fact-checked* (Exhibit 77).)

328. Sixth, 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, is not used to count votes, and does 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, *Los Angeles County—Voting Solutions for All People* (Exhibit 117).)

329. Seventh, 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 124).)

330. Eighth, 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, *Scytl strongly denies the false information related to the U.S. elections* (Exhibit 120); 11/13/20 Dominion, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 81); 11/21/20 Dominion, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 83); 11/26/20 Dominion, *Statement from Dominion on Sidney Powell's Charges* (Exhibit 85); 12/3/20 Dominion, *Election 2020: Setting the Record Straight: Facts & Rumors* (Exhibit 86).)

331. Ninth, it was widely reported and known in November 2020 that claims related to votes being sent to foreign countries were false. (11/16/20 Reuters, *Fact check: the U.S. military has not seized election servers in Germany* (Exhibit 123); 11/19/20 AP News, *AP FACT CHECK: Trump legal team's batch of false vote claims* (Exhibit 125); 11/15/20 AP News, *False reports claim election servers were seized in Germany* (Exhibit 121).)

332. Tenth, on December 18, 2020, Dominion sent a retraction demand letter to OANN and its executive officers, including Robert Herring (CEO), Charles Herring (President), and Bruce Littman (Executive Vice President). (Dominion Retraction Demand Letters to OANN (Exhibit 48).) The December 18, 2020 letter included information demonstrating that the claims OANN had been broadcasting and publishing about Smartmatic were false. For example, the letter included the following information:

- a. CISA's November 12 statement that there was "no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised";
- b. A link to a statement by fifty-nine "specialists in election security" that "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”;

- c. A link to a statement by U.S. Attorney General Bill Barr that “we haven’t seen anything to substantiate” allegations that “machines were programmed essentially to skew the election results.”

333. In all, beginning on December 18, 2020—and repeatedly thereafter, including but not limited to, December 22, 2020, December 29, 2020, February 4, 2021, February 12, 2021, April 16, 2021, May 12, 2021, June 18, 2021, July 13, 2021, and August 4, 2021—Dominion sent OANN correspondence detailing OANN’s defamatory falsehoods about Dominion, explaining how and why those defamatory falsehoods were factually inaccurate, and providing citations to independent sources confirming the falsity of those calculated falsehoods and the calculated falsehoods made about Smartmatic.

334. Eleventh, Smartmatic sent OANN a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46).) The 14-page letter identified some of OANN’s false statements that Smartmatic’s election technology and software were compromised or hacked during the 2020 U.S. election and while votes were sent to foreign countries for tabulation and explained why those statements were false.

335. Twelfth, Smartmatic filed suit against Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell on February 4, 2021. (Fox Complaint (Exhibit 148).) Smartmatic’s Fox Complaint laid out all of the above facts establishing that Smartmatic’s election technology and software were not compromised or hacked during the 2020 U.S. election and that Smartmatic did not send votes to foreign countries for tabulation during the 2020 U.S. election.

4. OANN knew that corrupt dictators did not control Smartmatic.

336. Information was available to OANN that showed its statements about Smartmatic being controlled by corrupt dictators were false. OANN either ignored this information, and thereby acted with reckless disregard or published its false statements knowing they were false based on this information.

337. First, before and during the disinformation campaign, information about the corporate status of Smartmatic U.S.A. 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 94).)

338. Second, before and during the disinformation campaign, information about the corporate status of SGO Corporation was publicly available and easy to confirm from public filings. Since its inception, SGO Corporation has reported and updated information about its shareholders to the government of the United Kingdom and that information is publicly available on a government website.

339. Third, 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 happen to have been 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, *Smartmatic Fact-checked* (Exhibit 75); 11/27/20 Smartmatic, *Smartmatic Fact-checked* (Exhibit 77).)

340. Fourth, 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 Chávez. (10/30/06 Fox News, *Voting Machines Cos: No Ties to Chávez* (Exhibit 92).)

341. For example, a March 2020 Politico article referenced in one of Fox News's broadcasts 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, *Los Angeles Voting Experiment* (Exhibit 106).) On information and belief, OANN followed Fox News's coverage of Smartmatic after the election.

342. Fifth, 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 results reported by the government for the 2017 election. Indeed, its technology helped prove the government was reporting false turnout numbers. (3/6/18 Business Wire, *Smartmatic Announces Cease of Operations in Venezuela* (Exhibit 98); 11/27/20 Smartmatic, *Smartmatic Fact-checked* (Exhibit 77).)

343. Sixth, before and during the disinformation campaign, information about Smartmatic's history was publicly available from an interview with Lord Mark Malloch-Brown broadcasted on ABS-CBN News on or around June 21, 2015. (6/21/15 ABS-CBN News, *Smartmatic denies being favored by COMELEC*.)¹⁰ In the interview, Lord Malloch-Brown stated "[Smartmatic] was never a Venezuelan company. It started in Florida." During the disinformation

¹⁰ Available at <https://www.youtube.com/watch?v=vsSGbilTyxQ>.

campaign, OANN was aware of this interview. OANN broadcast video or sound clips from this interview numerous times, including but not limited to, *Tipping Point*, November 20, and *News Room*, 9AM, December 5, 2020.

344. Seventh, Smartmatic sent OANN a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46).) The 14-page letter identified some of OANN's false statements that Smartmatic is a Venezuelan company founded and funded by corrupt dictators and explained why those statements were false.

345. Eighth, Smartmatic filed suit against Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell on February 4, 2021. (Fox Complaint (Exhibit 148).) Smartmatic's Fox Complaint laid out all of the above facts establishing that the statements OANN made about Smartmatic's history were false.

5. OANN knew Smartmatic's election technology has not been designed to or used to fix, rig, or steal elections.

346. Information was available to OANN that showed its statements about Smartmatic's election technology and software being designed and used to fix, rig, or steal elections and successfully doing so in prior elections were false. OANN either ignored this information, and thereby acted with reckless disregard or published its false statements knowing they were false based on this information.

347. 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 its election technology has been used to fix, rig, or steal elections.

348. 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, *Facts About Smartmatic* (Exhibit 78).)

349. 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." (9/26/12 Smartmatic Press Release, *Carter States that Election Process in Venezuela is "Best in the World"* (Exhibit 96); 11/27/20 Smartmatic, *Smartmatic Fact-checked* (Exhibit 77).)

350. 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.

351. 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.

352. Fifth, 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 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 135); Texas Secretary of State, *Voting System Examination(s) and Status for Dominion* (Exhibit 136).)

353. Sixth, Smartmatic sent OANN a retraction demand letter on December 11, 2020. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46).) The 14-page letter identified some of OANN’s false statements that Smartmatic’s election technology and software were designed to fix, rig, and steal elections and have, in fact, been used to do so before and explained why those statements were false.

354. Seventh, Smartmatic filed suit against Fox Corporation, Fox News Network LLC, Lou Dobbs, Maria Bartiromo, Jeanine Pirro, Rudolph Giuliani, and Sidney Powell on February 4, 2021. (Fox Complaint (Exhibit 148).) Smartmatic’s Fox Complaint laid out all of the above facts establishing that Smartmatic’s election technology and software were not designed to fix, rig, or steal elections and have not, in fact, been used for that purpose.

C. OANN had obvious reasons to doubt the veracity of its guests.

355. OANN published statements made by Mr. Giuliani, Ms. Powell, Mr. Lindell, and other guests regarding Smartmatic’s role in the 2020 U.S. election; Smartmatic’s ownership, founding and funding; and its election technology and software. OANN had obvious reasons to doubt the veracity of these guests and, on information and belief, OANN doubted their veracity. However, OANN had these guests on its shows, and quoted these guests, because they were willing to make factually inaccurate statements about Smartmatic. OANN chose these sources because it furthered the disinformation campaign.

1. OANN's guests did not provide evidence supporting their statements about Smartmatic.

356. None of the guests provided OANN credible support for their statements and implications regarding Smartmatic. No one introduced OANN to any person with firsthand knowledge of the claims they made about Smartmatic. Nor did anyone identify for OANN a person with firsthand knowledge of the claims they made about Smartmatic. On information and belief, OANN would have published an interview of someone with firsthand knowledge if that person existed.

357. Mr. Giuliani, Ms. Powell, Mr. Lindell, and other guests also did not provide OANN with any documentation showing (a) Smartmatic's election technology and software were widely used, including by Dominion, during the 2020 U.S. election, (b) Smartmatic's election technology and software changed or altered votes during the 2020 U.S. election, (c) Smartmatic's election technology and software were compromised or hacked during the 2020 U.S. election and sent votes to foreign countries during the 2020 U.S. election, (d) Smartmatic is a Venezuelan company founded and funded by corrupt dictators, or (e) Smartmatic's election technology and software were designed to fix, rig, and steal elections and had done so before.

2. OANN did not corroborate the statements made about Smartmatic by OANN's guests.

358. OANN was not able to independently corroborate the statements being made about Smartmatic by Mr. Giuliani, Ms. Powell, Mr. Lindell, and others. OANN had months to identify a source corroborating the statements and implications made by its guests. Instead of identifying a source corroborating their statements, OANN published their statements knowing there was no evidence to support what Mr. Giuliani, Ms. Powell, Mr. Lindell, and others had stated.

3. OANN was aware of publicly available information that contradicted the statements Mr. Giuliani, Ms. Powell, Mr. Lindell, and others made about Smartmatic.

359. First, OANN knew that credible sources, with firsthand knowledge, had contradicted the statements being made by Mr. Giuliani, Ms. Powell, Mr. Lindell, and others. During the disinformation campaign, OANN was aware that Smartmatic had published statements contradicting what was being said by its guests, including contradicting the claim that Smartmatic was widely used during the 2020 U.S. election or used by Dominion during the 2020 U.S. election.

360. During the disinformation campaign, OANN was aware that Dominion had published statements contradicting what was being said by Mr. Giuliani, Ms. Powell, Mr. Lindell, and others, including contradicting the claim that Smartmatic's election technology or software was used by Dominion during the 2020 U.S. election.

361. During the disinformation campaign, OANN was aware that government officials and agencies published statements contradicting what was being said by Mr. Giuliani, Ms. Powell, Mr. Lindell, and others. Many of those statements are discussed above. Among other things, OANN was aware or should have been aware of the following statements that contradicted claims that Smartmatic had fixed, rigged, or stolen the 2020 U.S. election:

- a. November 4: Cybersecurity and Infrastructure Security Agency Christopher Krebs issued a statement: "[W]e have no evidence any foreign adversary was capable of preventing Americans from voting or changing vote tallies." (11/4/20 Cybersecurity & Infrastructure Security Agency, *Statement from CISA Director Krebs Following Final Days of Voting* (Exhibit 114).)
- b. November 10: New York Times reported contacting officials in every state on November 9 and 10, and that officials in all states but Texas reported no illegal voting or major voting issues. (11/10/20 The New York Times, *The*

Times Called Officials in Every State: No Evidence of Voter Fraud (Exhibit 115).)

- c. November 12: The Elections Infrastructure Government Coordinating Council Executive Committee and the Election Infrastructure Sector Coordinating Council issued a joint statement: “The November 3rd election was the most secure in American history ... There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.” (11/12/20 Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees* (Exhibit 119).)
- d. December 1: Attorney General William Barr said in an interview: “There’s been one assertion that would be systematic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven’t seen anything to substantiate that.” (12/1/20 AP News, *Disputing Trump, Barr says no widespread election fraud* (Exhibit 129).)

362. Second, OANN was aware that the election officials in Nevada, Arizona, Georgia, Pennsylvania, Michigan, and Wisconsin did not support and contradicted the statements being made by Mr. Giuliani, Ms. Powell, and others regarding the security of the elections in their states and votes being changed by election technology or software. Each of the states provided updates during the disinformation campaign. None corroborated the statements being made by Mr. Giuliani, Ms. Powell, Mr. Lindell, and others. If OANN was not aware of these statements, then it purposefully avoided them because they were widely known and distributed.

363. Third, OANN was aware, or should have been aware, that Mr. Giuliani's, Ms. Powell's, Mr. Lindell's, and others' statements about Smartmatic's election technology and services being used by Dominion were contradicted by the testing conducted by the U.S. Election Assistance Commission. The U.S. Election Assistance Commission has a testing program that EAC-certified machines must pass before being used for elections.

Before voting machines and election management systems are used in elections, the systems undergo rigorous hardware and software testing by laboratories accredited by the EAC and the National Institutes of Standards and Technology (NIST). The testing encompasses security, accuracy, functionality, accessibility, usability, and privacy based on requirements in the EAC's Voluntary Voting System Guidelines (VVSG).

(U.S. Election Assistance Commission, *How the U.S. Election Assistance Commission Facilitates Fair and Secure Elections* (Exhibit 130).)

364. OANN knew, or should have known, that any election technology or software that was certified by the EAC and used in the 2020 U.S. election had been tested for "security, accuracy, functionality, accessibility, usability, and privacy." Mr. Giuliani's, Ms. Powell's, Mr. Lindell's, and others' statements regarding Smartmatic's software cannot be reconciled with this certification.

365. Fourth, OANN knew, or should have known, that election technology specialists contradicted what Mr. Giuliani, Ms. Powell, Mr. Lindell, and others said about Smartmatic's software being used by Dominion to switch or alter votes. For example, Eddie Perez was interviewed by the New York Times on November 11, 2020. (11/11/20 The New York Times, *No, Dominion voting machines did not delete Trump votes* (Exhibit 118).) On November 11, the New York Times quoted Mr. Perez as saying:

Many of the claims being asserted about Dominion and questionable voting technology is misinformation at best and, in many cases, they're outright disinformation.

I'm not aware of any evidence of specific things or defects in Dominion software that would lead one to believe that votes had been recorded or counted incorrectly.

366. Mr. Perez was not the only one. On November 16, election security specialists issued a statement addressing claims that election technology and software had been manipulated to rig the 2020 U.S. election. (11/16/20 Letter from Election Security Specialists (Exhibit 122).)

The statement read:

We are aware of alarming assertions being made that the 2020 election was “rigged” by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent. To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise.

367. OANN knew, or should have known, that election security specialists debunked the statements being made by Mr. Giuliani, Ms. Powell, Mr. Lindell, and others regarding Smartmatic’s election technology and software fixing, rigging, or stealing the election. Based on information readily available to OANN, it knew or should have known that statements about Smartmatic’s election technology and software changing or stealing votes were unsubstantiated and technically incoherent.

368. Fifth, OANN knew that Mr. Giuliani’s, Ms. Powell’s, Mr. Lindell’s, and others’ statements regarding an election fraud involving Smartmatic were inconsistent with statements made by attorneys in court. For example:

- a. November 17: Mr. Giuliani appeared for the plaintiff in *Donald J. Trump for President, Inc. vs. Boockvar*, filed in Pennsylvania. This was the only election related case in which Mr. Giuliani appeared before a court. During the hearing, Mr. Giuliani stated: “This is not a fraud case.” (11/20/20 The

New York Times, *Trump Campaign Lawyers Step Up but Are Swiftly Knocked Down* (Exhibit 126).)

- b. November 11: Johnathan Goldstein appeared for the plaintiff in *Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*, filed in Pennsylvania. During the hearing, Mr. Goldstein stated: “I am not calling the Board of the DNC or anybody else involved in this a liar. Everybody is coming to this with good faith.” (*Id.*)
- c. November 12: Kory Langhofer appeared for the plaintiff in *Donald J. Trump for President, Inc. v. Hobbs*, filed in Arizona. During the hearing, Mr. Langhofer stated: “This is not a fraud case.” (*Id.*)

369. The statements made by attorneys in court were not consistent with Mr. Giuliani’s, Ms. Powell’s, Mr. Lindell’s, and others’ claim that Smartmatic had perpetrated a “fraud” by fixing, rigging, and stealing the 2020 U.S. election. OANN knew that its guests lacked credibility based on the fact that lawyers representing President Trump contradicted their statements in court. If OANN did not know that President Trump’s lawyers were making contradictory statements in court, then OANN purposefully avoided learning that fact because OANN was aware of the litigation and easily could have learned what was being said.

370. Sixth, OANN knew that Ms. Powell’s election lawsuits challenging the 2020 presidential election beginning on November 25, 2020 were a sham. All of Ms. Powell’s cases had been summarily dismissed by federal judges by December 9, 2020.

371. Ms. Powell filed four lawsuits containing accusations about Smartmatic: *Pearson v. Kemp*, No. 20-cv-4809 (N.D. Ga., filed on November 25, 2020); *King v. Whitmer*, No. 20-cv-13134 (E.D. Mich., filed on November 25, 2020); *Feehan v. Wisconsin Elections Commission*,

No. 20-cv-1771 (E.D. Wis., filed on December 1, 2020); and *Bowyer v. Ducey*, No. 02-cv-02321 (D. Ariz., filed on December 2, 2020).

372. 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.

373. The lawsuits that Ms. Powell eventually filed were shams as they relate to Smartmatic. Ms. Powell's lawsuits were telling for what they did not include:

- a. The lawsuits had no affidavit or statement by any Smartmatic or Dominion employee admitting using election technology or software to alter votes in the 2020 elections.
- b. The lawsuits had no affidavit or statement by anyone who claimed personal knowledge that Smartmatic had done anything to fix, rig, or steal the 2020 U.S. election.
- c. The lawsuits had no affidavit or statement by anyone familiar with the election technology and software that Smartmatic used in the 2020 U.S. election.
- d. The lawsuits had no affidavit or statement by any current or former Smartmatic employee that the company's election technology and software were designed to fix, rig, or steal elections.
- e. The lawsuits had no allegations or support for the notion that Smartmatic was using the same election technology and software in 2020 in the United States as had been used in Venezuelan elections years earlier.

f. The lawsuits had no allegations or support for the notion that any state or county election officials had committed fraud in the 2020 U.S. election.

374. Of the four lawsuits brought by Ms. Powell, all were immediately dismissed for the very reasons Ms. Powell knew these suits were shams: lack of standing, Eleventh Amendment immunity, laches, mootness, and failure to state a claim, among other reasons. *Pearson*, 20-cv-4809 (Dkt. No. 74, Dec. 7, 2020); *King*, 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).

375. Ms. Powell publicly stated that Smartmatic’s election technology and software had been widely used in the 2020 U.S. election and had been used to fix, rig, and steal the election for Joe Biden and Kamala Harris. But when Ms. Powell filed her lawsuits, she could not make or substantiate those claims. OANN knew based on the lawsuits that Ms. Powell filed that she could not substantiate her claims about Smartmatic.

376. The Trump Campaign even publicly distanced itself from Ms. Powell on November 22. It issued the following statement: “Sidney Powell is practicing law on her own. She is not a member of the Trump Legal Team. She is also not a lawyer for the President in his personal capacity.” (Tweet, @JennaEllisEsq., November 22, 2020 (Exhibit 127).) OANN even acknowledged that the Trump Campaign distanced itself from Ms. Powell on *Tipping Point*, November 23, but continued to tell viewers that Ms. Powell’s statements about Smartmatic had merit. (*Tipping Point*, November 23, 2020 (Exhibit 20).)

377. OANN knew that Ms. Powell had not filed any lawsuits on behalf of the Trump Campaign (or otherwise) at the time that the Trump Campaign publicly distanced itself and President Trump from Ms. Powell. Ms. Powell’s failure to file any lawsuits that were consistent

with the statements that she had made about Smartmatic did give or should have given OANN additional reasons to doubt her credibility.

4. OANN knew its guests were biased and not credible but failed to disclose that fact to its audience.

378. During its disinformation campaign, OANN brought on a series of guests that made defamatory statements about Smartmatic. OANN had reason to doubt the veracity of every single guest. As discussed above, during this timeframe there was publicly available information that contradicted the statements made about Smartmatic during OANN broadcasts. From this alone, OANN had reason to doubt the truthfulness and credibility of each of its guests. In addition to this, OANN knew or should have known its guests were biased but failed to disclose that fact to its audience. For example:

379. Kyle Becker: Mr. Becker is the CEO and Chief Editor of Becker News, which was founded around late 2020 or early 2021. Previously, he was a writer and associate producer at Fox News, and before that, a writer at the Independent Journal Review (IJR). Mr. Becker was suspended indefinitely from IJR in 2017 after he wrote a “conspiracy-laden” story “that suggested, without evidence, that former president Barack Obama had pressured a federal judge in Hawaii to rule against President Trump’s latest travel ban.”¹¹ Amongst the controversy, IJR admitted the story was false and retracted it, and Mr. Becker was indefinitely suspended.

380. OANN was aware, or should have been aware, that Mr. Becker is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories, as the IJR scandal was highly publicized in 2017. When Mr. Becker appeared on OANN broadcasts, OANN

¹¹ Available at <https://www.politico.com/blogs/on-media/2017/03/independent-review-journal-suspends-3-over-obama-conspiracy-236310>; https://www.washingtonpost.com/lifestyle/style/a-conservative-news-crack-up-things-just-got-real-for-some-partisan-personalities/2017/03/23/87641024-0f42-11e7-9d5a-a83e627dc120_story.html.

knew that it did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Becker's credibility and bias problems.

381. Clay Clark: Mr. Clark is the founder of ThriveTime Show and Thrive15, a business coaching platform and online education platform, and the host of *The ThriveTime Show* podcast. Mr. Clark's background is in entrepreneurship, but in 2020 he started espousing anti-government conspiracy theories. In 2020, he published *Fear Unmasked*, a book that claims to provide "the essential information you need to know about the coronavirus, the government shutdown, and the media that is perpetuating the hysteria," which "will uncover the truth about the virus and reveal the deeper, unconstitutional issues at play in this pandemic."¹² Mr. Clark has no experience in government, science, or media. Mr. Clark similarly has no background or experience with cybersecurity or election integrity.

382. OANN was aware, or should have been aware, that Mr. Clark is an unreliable source for information on the issues of cybersecurity and election integrity and is known for promoting unsubstantiated conspiracy theories about the government and the media. When Mr. Clark appeared on OANN broadcasts, OANN knew that it did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Clark's lack of knowledge regarding election integrity or his credibility and bias problems.

383. Joseph diGenova: Mr. diGenova is a partner at a law firm he owns with his wife, Victoria Toensing. He began his career in the 1980s when Mr. diGenova served as a U.S. Attorney in the District of Columbia. Ms. Toensing served as a Deputy Assistant General in the Justice Department during the Reagan administration. Over the years, Mr. diGenova and his wife have

¹² Available at <https://www.amazon.com/Fear-Unmasked-Clay-Clark/dp/1949784452>.

“been involved in numerous scandals and legal battles related to Donald Trump’s presidency.”¹³ For example, during the 2017 Robert Mueller investigation into President Trump’s ties with Russia, Mr. diGenova falsely asserted that the allegations were “cooked up by the FBI and Justice Department to frame Trump and ensure he wouldn’t become president.”¹⁴ And in 2019, Mr. diGenova started a conspiracy about George Soros, claiming Mr. Soros was in control of the FBI and the State Department and was trying to take over Ukraine.

384. OANN was aware, or should have been aware, that Mr. diGenova is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories. When Mr. diGenova appeared on OANN broadcasts, OANN knew that he did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. diGenova’s credibility and bias problems.

385. Tom Fitton: Mr. Fitton is president of Judicial Watch, a “conservative watchdog group,” and has held that position since 1998. Mr. Fitton is known for spreading misinformation on various topics, even before the 2020 presidential election. For example, since at least 2015, when Judicial Watch sued the National Oceanic and Atmospheric Administration over production of a climate study, Mr. Fitton has repeatedly denied climate change, calling it “fraud science.” In addition, he attempted to discredit special counsel Robert Mueller’s investigation into the 2016 presidential election, calling it a “coup,” and advocated shutting down the FBI in 2017 because “it

¹³ Available at <https://www.businessinsider.com/victoria-toensing-joseph-digenova-rudy-giuliani-allies-fbi-investigation-2021-5>.

¹⁴ Available at <https://www.businessinsider.com/victoria-toensing-joseph-digenova-rudy-giuliani-allies-fbi-investigation-2021-5>.

was turned into a KGB-type operation by the Obama administration.”¹⁵ There is no evidence supporting any of these claims by Mr. Fitton.

386. Judicial Watch, under Fitton’s leadership, has also spread numerous conspiracy theories. In 2008 and 2010, the organization falsely reported Nancy Pelosi’s air travel expenses. In 2013, it mischaracterized that the Department of Justice sent employees to Florida “to help organize and manage rallies and protests against George Zimmerman” in the wake of Trayvon Martin’s death.¹⁶ In 2014 and 2015, it falsely alleged that ISIS was operating a camp in Mexico. In 2017, it spread a conspiracy theory tying the Democratic Party to a DNC staffer’s death. In 2018, it accused the Clinton Foundation of using funds to pay for Chelsea Clinton’s wedding. All of these allegations were proved to be untrue.

387. Prior to the 2020 presidential election, both Mr. Fitton and Judicial Watch had a history of spreading lies regarding voter fraud. During the 2016 presidential election, Judicial Watch alleged that eleven California counties had more registered voters than citizens eligible to vote, and during the 2020 Democratic primary, it alleged that eight Iowa counties had more registered voters than citizens old enough to register. Moreover, Mr. Fitton tweeted that nearly one million undocumented immigrants illegally voted in the 2018 midterm election. All these claims are unsubstantiated and were ultimately disproven.

388. OANN was aware, or should have been aware, that Mr. Fitton is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories, especially conspiracy theories focused on voter fraud, both personally and through Judicial Watch. When Mr.

¹⁵ Available at <https://thehill.com/homenews/administration/364868-conservative-watchdog-head-we-need-to-consider-shutting-down-the-fbi?rl=1>

¹⁶ Available at <https://www.politifact.com/factchecks/2013/jul/12/judicial-watch/judicial-watch-says-department-justice-unit-organi/>.

Fitton appeared on OANN broadcasts, OANN knew that it did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Fitton's credibility and bias problems, particularly with regards to claims of voter fraud.

389. Allan dos Santos: Mr. Santos founded Terça Livre, a conservative news outlet in Brazil, in 2014. Terça Livre is known for its ties to Brazilian President Jair Bolsonaro. Mr. Santos, through his Terça Livre platform, is notorious in Brazil for spreading disinformation and has been under ongoing investigation by the Brazilian government. In 2019, the Fake News Joint Congressional Inquiry Committee in Brazil investigated Terça Livre for spreading false "news." Then, in 2020, the Federal Police began investigating Mr. Santos for false "news" reports. They executed search warrants against Santos and twenty-eight other Brazilian political and media influencers. As a result of the investigation, in July 2020, Mr. Santos's Twitter, Instagram, and Facebook accounts were suspended. Specific examples of baseless and controversial statements made by Mr. Santos in 2020 include his accusation that Brazilian ministers were complicit in wiretapping and "espionage," and comparing the lack of chloroquine to treat COVID-19 patients to the murder of Jews in the Holocaust.

390. OANN was aware, or should have been aware, that Mr. Santos is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories. When Mr. Santos appeared on OANN broadcasts, OANN knew that it did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Santos's credibility and bias problems.

391. Keith Trippie: According to his LinkedIn page, Mr. Trippie is the CEO of his consulting firm, the Trippie Group, LLC, a senior cyber advisor to a private company named ASEAN, and author of *The Forgotten American: Prosecuting a RICO Case Against the US Congress*. *The Forgotten American* was published on or around December 21, 2020 and espouses

Mr. Trippie's conspiracy theory that Congress committed RICO violations during the 2020 election cycle. Although Mr. Trippie wrote it as a fictional courtroom drama, his "one wish for the book is that it serves as a blueprint for a couple patriotic attorneys to find inspiration [to] [t]ake this case to court."¹⁷ Mr. Trippie is not an attorney.

392. OANN was aware, or should have been aware, that Mr. Trippie is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories, particularly where his book blurs the line between fact and fiction. When Mr. Trippie appeared on OANN broadcasts, OANN knew that it did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Trippie's credibility and bias problems.

393. J. Michael Waller: Mr. Waller is a Senior Analyst for Strategy at the Center for Security Policy, where he specializes in "propaganda, political warfare, psychological warfare, and subversion." The Center for Security Policy has been described as an "extremist think tank" and heavily criticized for promoting dangerous anti-Muslim conspiracies. For example, in 2012, the group falsely accused an aide to Hilary Clinton of being a "secret member of the Muslim Brotherhood." In 2015, the group published survey results claiming 25% of Muslims in the US believed violence against America was justified "as part of the global jihad." The Washington Post called the survey "shoddy," as it was based on a sample of 600 self-selecting participants in an online poll.¹⁸

¹⁷ Available at https://www.amazon.com/Keith-Trippie/e/B08R8GB73P%3Fref=dbs_a_mng_rwt_scns_share.

¹⁸ Available at <https://www.washingtonpost.com/news/the-fix/wp/2015/12/07/donald-trumps-call-to-ban-muslims-from-coming-to-the-u-s-has-a-very-bad-poll-at-its-center/>.

394. OANN was aware, or should have been aware, that Mr. Waller, as an analyst for the Center of Security Policy, is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories. When Mr. Waller appeared on OANN broadcasts, OANN knew that it did not have any evidence to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Waller's credibility and bias problems.

395. Michael J. Lindell: Mr. Lindell is the CEO of MyPillow, a pillow company that he founded in 2004. Mr. Lindell became known for starring in MyPillow's infomercials, which claimed that MyPillow would help people suffering from fibromyalgia, insomnia, migraines and headaches, sleep apnea, snoring, TMJ, and restless leg syndrome. In these infomercials, Mr. Lindell falsely held himself out as a sleep expert. In 2016, California prosecutors sued the company for false advertising, alleging that these claims were "untrue or misleading."¹⁹ Mr. Lindell paid \$995,000 in civil penalties, rather than litigating the case. That same year, MyPillow also paid \$1.1 million to settle a case for failing to collect New York sales tax. In 2017, MyPillow settled a class action lawsuit challenging its use of "buy one get one" promotions and other deceptive advertising. As a result of numerous consumer complaints, The Better Business Bureau revoked the accreditation of MyPillow and lowered its rating to "F." Mr. Lindell has no background or experience with cybersecurity or election integrity.

396. OANN was aware, or should have been aware, that Mr. Lindell is an unreliable source for information, particularly on the topic of election integrity, an area in which he has no experience. When Mr. Lindell appeared on OANN broadcasts and when OANN broadcasted Mr. Lindell's self-produced "documentaries," OANN knew that it did not have any evidence to support

¹⁹ See Compl., *California v. MyPillow, Inc.*, No. HG16836619 (Ca. Super. Ct., Alameda Cty. Oct. 26, 2016).

his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Lindell's lack of experience in election integrity or Mr. Lindell's credibility and bias problems.

397. Mr. Lindell included numerous guests in his four "documentaries." None of these guests, billed as credible and legitimate "experts," were credible, yet OANN still published their statements. OANN had reason to doubt the veracity of every single guest in Mr. Lindell's "documentaries." As discussed above, during this timeframe there was publicly available information that contradicted the statements made about Smartmatic during Mr. Lindell's "documentaries." From this alone, OANN had reason to doubt the truthfulness and credibility of each of the Lindell "documentary" guests. In addition, OANN should have doubted the veracity of each speaker based on information specific to each individual. For example:

398. Mary Fanning: Ms. Fanning appeared in Mr. Lindell's "documentary" *Absolute Proof*. Ms. Fanning is a co-author of articles at *The American Report*—an Internet conspiracy theory blog—and self-proclaimed "national security" investigative reporter. Ms. Fanning has no publicly available credentials in the fields of national security or journalism. *The American Report* website was originally registered to a "Mary Fanning Kirchhoefer" in 2015, who has been a donor of the Trump Campaign and Republican National Committee, among other political causes. Ms. Fanning's LinkedIn profile does not have any work history, credentials, or education related to cybersecurity, journalism, or election integrity. (Mary Fanning Kirchhoefer, LinkedIn (Exhibit 158).) In the past, Ms. Fanning perpetuated conspiracy theories, including the "Hammer and Scorecard" theory, which was debunked by Chris Krebs and other sources (Tweet, @CISAKrebs, Nov. 7, 2020 (Exhibit 141).)

399. OANN was aware, or should have been aware, that Ms. Fanning is an unreliable source for information and has no expertise on election integrity. When OANN broadcast the statements Ms. Fanning made in the Lindell "documentaries," OANN knew that she did not have

any evidence or firsthand knowledge to support her claims about Smartmatic. Nonetheless, OANN did not tell its audience about Ms. Fanning's obvious credibility and bias problems.

400. Michael Flynn: Mr. Flynn is a retired U.S. Army lieutenant general who twice pled guilty in 2018 to lying to the FBI about contacts with Russia. He was subsequently removed from his position as White House national security advisor and promptly embroiled in a legal battle. Mr. Flynn was banned from Twitter in January 2021 in accordance with a policy on "Coordinated Harmful Activity" for sharing QAnon conspiracy theory material (1/8/21 NBC News, *Twitter bans Michael Flynn, Sidney Powell in QAnon account purge* (Exhibit 146).)

401. OANN was aware, or should have been aware, that Mr. Flynn is an unreliable source for information and is known for promoting unsubstantiated conspiracy theories. When OANN broadcast the statements Mr. Flynn made in the Lindell "documentaries," OANN knew that he did not have any evidence or firsthand knowledge to support his claims about Smartmatic. Nonetheless, OANN did not tell its audience about Mr. Flynn's credibility and bias problems.

D. OANN knowingly violated generally accepted journalistic standards when publishing the reports.

402. Upon information and belief, OANN and its anchors, reporters and producers adhere to a code of conduct or ethics when investigating and publishing news reports. One of the reasons for journalists to adhere to a code of conduct is to make sure that they do not act with reckless disregard for the truth in investigating or verifying reports and do not publish misleading reports, particularly news reports being portrayed as presenting facts or evidence.

403. However, OANN violated those generally accepted journalism standards. It did so because adhering to them would not have allowed it to: (a) purposefully avoid learning the truth about Smartmatic and its technology and software and use in the 2020 U.S. election; (b) publish

the factually inaccurate and misleading reports about Smartmatic and its technology and software; and (c) interject Smartmatic into a wide-ranging criminal fraud to fix the 2020 election.

404. OANN violated at least eleven generally accepted journalism standards. First, generally accepted journalism standards encourage reporters and producers to be accurate and fair when gathering and reporting information. OANN violated this standard because, among other things, it reported information that it knew was not accurate, it reported information it knew was misleading, and it purposefully avoided learning the truth that was inconsistent with its preconceived narrative that Smartmatic had stolen the 2020 U.S. election.

405. Former senior news producer Martin Golingán confirmed that OANN violated this standard. OANN producers were told “to check *Gateway Pundit* and similar questionable sources to find content to be aired on [OANN]” regarding “election fraud.” (*See* Golingán Decl. ¶ 14 (Exhibit 151).) Mr. Golingán also declared that, based on his experience at OANN, he knows “for a fact” that OANN aired false stories. (*Id.* ¶ 17.)

406. Second, generally accepted journalism standards encourage anchors, reporters and producers to verify information before releasing it. OANN violated this standard because, among other things, it did not verify or corroborate the information provided by its sources (whom it had obvious reasons to doubt) and did not verify or corroborate the many serious and broad-ranging statements and implications it published about Smartmatic. OANN made no effort to reach out to Smartmatic during its disinformation campaign for comment and/or to verify the accuracy of any statements and implications being made about Smartmatic, its history, its business, its technology or software, and/or its role in the 2020 U.S. election.

407. Former senior news producer Martin Golingán confirmed that OANN violated this standard. During the disinformation campaign, OANN producers “were forced to run [reports] without any fact checking or vetting of sources” and “were not told who or what [the reporters’]

sources were or whether [the reports] got their information.” (*See* Golingán Decl. ¶ 15 (Exhibit 151).) Executive producer Lindsay Oakley told producers not to cut stories by reporter Kristian Rouz even though producers had cut his stories before because, in Mr. Golingán’s words, “the news producers knew his content was disinformation and because producers did not trust him.” (*Id.* ¶ 14.)

408. Third, generally accepted journalism standards encourage reporters and producers to gather and update information before and after the publication of each report. OANN violated this standard because it purposefully avoided gathering information that was inconsistent with its preconceived narrative and did not fully and properly update its reporting after being told and learning its reporting was factually inaccurate and misleading.

409. Former senior news producer Martin Golingán confirmed that OANN violated this standard. Even after Dominion sent OANN a retraction demand letter detailing why OANN’s statements about Dominion and Smartmatic were false, “The Dominion demand letter changed nothing at [OANN]. It had the opposite effect.” (*See* Golingán Decl. ¶ 17 (Exhibit 151).) Instead of updating its previous publications, OANN continued to publish false statements about Smartmatic and voting machines being used to switch votes and steal the 2020 U.S. election.

410. Fourth, generally accepted journalism standards encourage reporters and producers to disclose information about their sources so that readers and viewers can make informed decisions regarding credibility. OANN violated this standard because it failed to disclose its sources’ lack of credibility and lack of firsthand knowledge. As discussed above, OANN had obvious reasons to doubt the veracity of Mr. Giuliani, Ms. Powell, Mr. Lindell, and other guests. But, instead of disclosing those doubts, OANN endorsed what its guests were saying.

411. Fifth, generally accepted journalism standards encourage reporters and producers to seek out opposing views for a report. OANN violated this standard because it intentionally

avoided publishing statements by others who would have directly contradicted the false information that it presented. The OANN publications at issue violated OANN's own edict that it provides "credible, honest, unbiased reporting." There was nothing credible, honest, or unbiased about OANN's coverage of Smartmatic during the disinformation campaign.

412. Sixth, generally accepted journalism standards encourage reporters and producers to avoid distorting facts. OANN violated this standard because it did not provide the proper context for the statements made in the disinformation campaign. For example, OANN rarely called out Mr. Giuliani, Ms. Powell, Mr. Lindell, and others for stating that they had or have evidence to support their statements about Smartmatic without actually showing or disclosing the evidence.

413. Former senior news producer Martin Golingán confirmed that OANN violated this standard. During the disinformation campaign, if the Herring family "simply [saw] a headline they liked and if it fit their narrative, they would run with it." (*See* Golingán Decl. ¶ 12 (Exhibit 151).)

414. Seventh, generally accepted journalism standards encourage reporters and producers to treat sources and subjects with respect. OANN violated this standard. OANN attacked an under-the-radar election company that participated in one county during the 2020 U.S. election. OANN also attacked Smartmatic as a company with ties to communists. OANN made Smartmatic out to be a criminal in the minds of its readers and viewers. OANN did not care about the damage it did to Smartmatic.

415. Former senior news producer Martin Golingán confirmed that OANN violated this standard. When Dominion sent OANN a retraction demand letter, the Herring family was "thrilled." (*See* Golingán Decl. ¶ 17 (Exhibit 151).) To the Herring family, "all publicity, even so-called bad publicity, was good for [OANN]. The Dominion demand letter changed nothing at [OANN]. It had the opposite effect." (*Id.*) On information and belief, the Herring family and OANN reacted similarly to Smartmatic's retraction demand letter.

416. Eighth, generally accepted journalism standards encourage reporters and producers to consider the long-term impact of their publications. OANN violated this standard by publishing reports with the intent of harming Smartmatic and undermining the public's confidence in the integrity of the 2020 U.S. election. OANN did not consider the long-term impact of its disinformation campaign on Smartmatic or the country.

417. Ninth, generally accepted journalism standards encourage reporters and producers to avoid conflicts of interest. OANN violated this standard by allowing Mr. Giuliani, Ms. Powell, Mr. Lindell, and others to elevate their own self-interest above fairness and accuracy. OANN's own actions before and during the disinformation campaign evidence its interest in advancing a preconceived story that sells as opposed to reporting the truth.

418. Tenth, generally accepted journalism standards encourage reporters and producers to be transparent with readers and viewers. OANN violated this standard by failing to disclose to readers and viewers that it was not publishing an objective, fact-based report about Smartmatic. OANN misled readers and viewers into believing that it was reporting news as a result of a fact-driven "investigation," when it was not.

419. Eleventh, generally accepted journalism standards encourage reporters and producers to admit and correct mistakes. OANN violated this standard by failing to admit and correct the factual inaccuracies from the disinformation campaign after being informed of them. On December 11, 2020, Smartmatic sent OANN a retraction demand. OANN never publicly acknowledged the demand or the factual information included with the demand. OANN did not issue the requested retraction and did not fully admit and correct all of its mistakes.

420. OANN's violations of generally accepted journalism standards demonstrate the intentionality of its actions. OANN's reckless disregard for the truth and purposeful avoidance of the truth were not the result of mistake or ignorance. OANN knew what it should do to investigate

and report on the events following the 2020 U.S. election. OANN knew what it should do based on generally accepted journalism standards. OANN intentionally and knowingly ignored those standards. It did so for self-promotion and preservation, and it maliciously attacked Smartmatic for these reasons.

E. OANN used its disinformation campaign against Smartmatic for financial gain and acted with ill-will and improper motives.

421. OANN not only knowingly participated in publishing false information about Smartmatic during the disinformation campaign, but it also did so with ill-will and improper motives for self-promotion and financial and other gain.

422. Before the election, OANN reported that Democrats were trying to steal the election from President Trump by tampering with absentee ballots and mail-in votes and by using a “computer system to alter votes electronically.” Even before OANN made false claims about Smartmatic, OANN pushed a preconceived narrative about “election fraud” in order to stay on President Trump’s good side and appeal to pro-Trump viewers.

423. After the election, OANN spread disinformation about Smartmatic and the election to keep and grow its audience base and strengthen endorsements for President Trump. OANN’s initial stories about election fraud and Smartmatic were a hit with viewers. OANN wanted to keep its viewers happy and tuned-in, so it continued to broadcast stories about Smartmatic.

424. OANN’s coverage was also a hit with President Trump. After November 12, when OANN started covering the “election fraud” story, President Trump tweeted @OANN to his tens of millions of followers over 40 times.²⁰ For example, on December 1, 2020, President Trump tweeted “Hope everybody is watching @OANN right now. Other media afraid to show.” (Tweet, @realDonaldTrump, Dec. 1, 2020 (Exhibit 143).)

²⁰ See Trump Twitter Archive, <https://www.thetrumparchive.com/>.

425. It was in this competitive environment that OANN started its own disinformation campaign against Smartmatic. The disinformation campaign provided OANN an opportunity to solidify its position with President Trump and his supporters, and subsequently increase its viewers, its online presence, and, most importantly, its paid subscribers.

V. OANN's disinformation campaign irreparably harmed Smartmatic and its election technology and software.

426. OANN published its defamatory statements about Smartmatic on multiple programs over an elongated period of time. OANN's defamatory statements were then republished by individuals who read or watched them originally on a OANN distribution channel. OANN knew and understood this republication would happen. As a result, through OANN's publication and republication, OANN's defamatory statements about Smartmatic were widely and generally disseminated, particularly in the United States where OANN has its largest audience base.

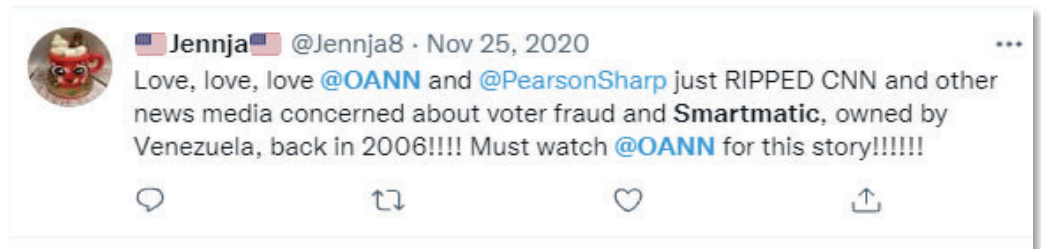
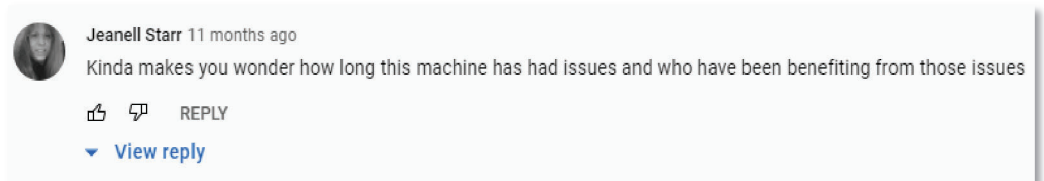
427. OANN's defamatory statements were a proximate and substantial cause of Smartmatic's name and brand becoming synonymous with election fraud with members of the general public and government officials, particularly those in the United States. OANN's defamatory statements cast Smartmatic as one of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

428. 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.

429. OANN's defamatory statements irreparably tarnished Smartmatic's name and brand with members of the general public, particularly in the United States, who read or watched its publications. Below are just a few examples of the reactions people had to OANN's publications:

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



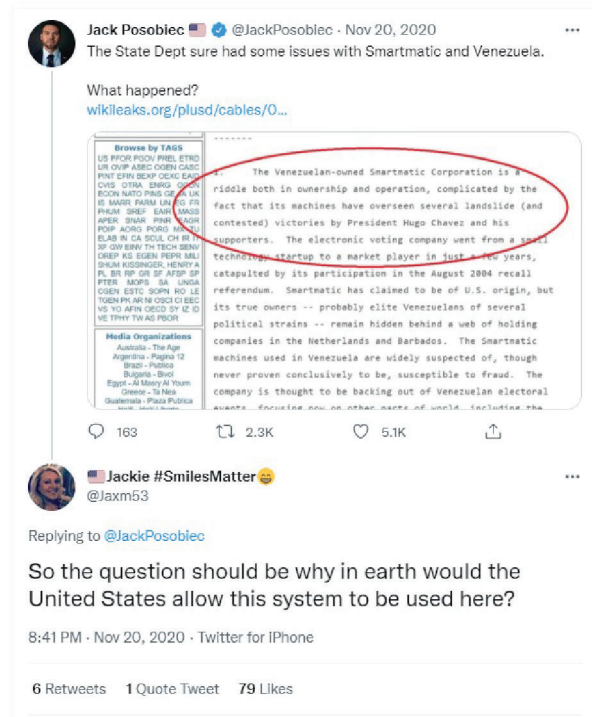
- b. People who read or watched OANN's publications came to believe that Smartmatic's technology and software were used to change votes.



- c. People who read or watched OANN's 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 OANN's publications came to believe that Smartmatic's election technology and software should never be used in an election.

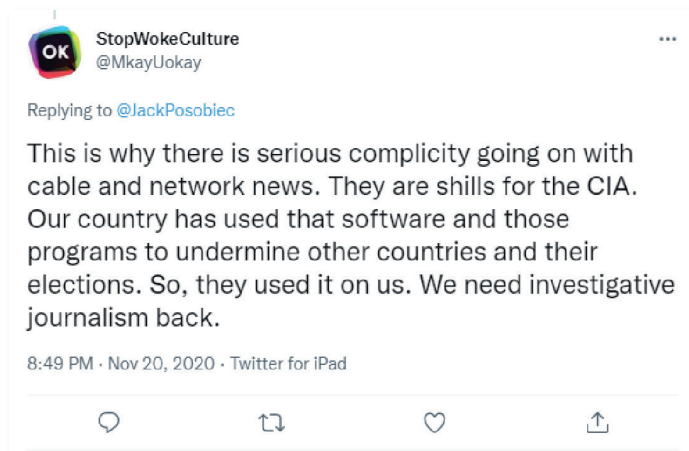
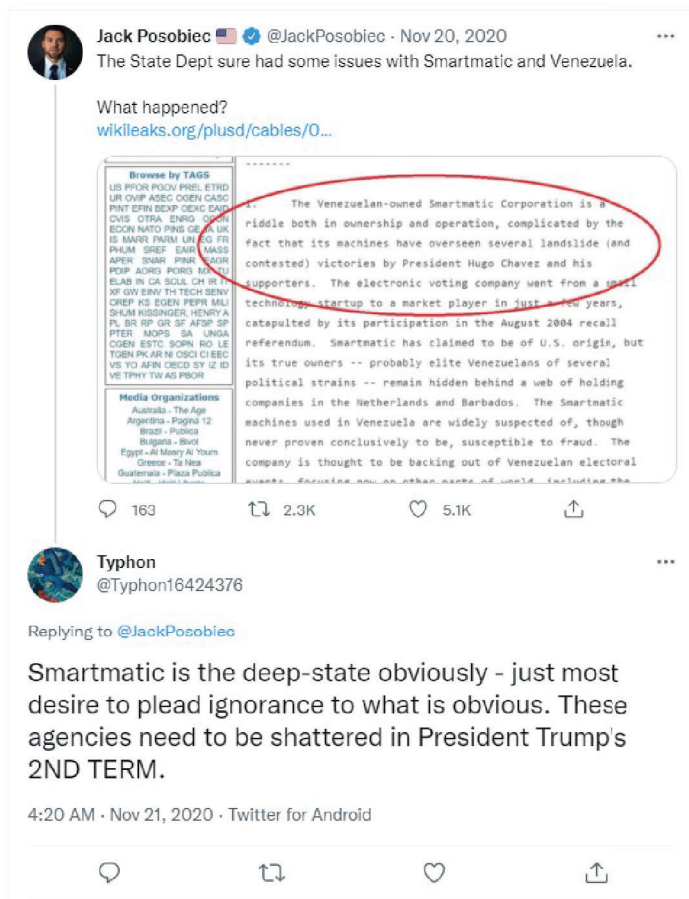




- e. People who read or watched OANN's publications equated Smartmatic with Dominion, the other voting machine company that OANN indicated had rigged the 2020 U.S. election by using Smartmatic software to switch votes.



- f. People who read or watched OANN's publications came to believe that Smartmatic was part of the "deep state" used to rig elections in the United States and abroad.

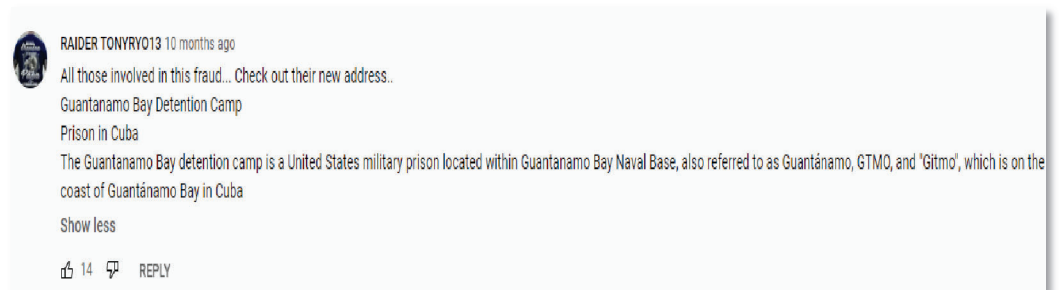


- g. People who read or watched OANN's publications came to believe that Smartmatic was evil.



- h. People who read or watched OANN's publications came to believe that Smartmatic was corrupt and engaged in criminal activities.





- i. People who read and watched OANN's publications came to believe that OANN was the only news organization telling them the truth about election fraud in the 2020 U.S. election.



430. 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 OANN's publications about Smartmatic received a very different message.

431. OANN'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 OANN's publications. 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.

432. The widespread and general distribution of OANN's publications about Smartmatic, thus, contributed to a crisis situation for Smartmatic, particularly in the United States where OANN has its largest audience base. 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 OANN's publication of its 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 OANN's publication of its 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 OANN's publication of its defamatory statements and will spend millions more in the coming years.

433. OANN's publication of its defamatory statements about Smartmatic, and the republication of those statements, was a substantial cause of these out-of-pocket expenses. OANN's defamatory statements were read or watched by a significant audience base through publication and republication, particularly in the United States. 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.

434. Moreover, OANN's publication of its defamatory statements was a substantial cause of Smartmatic's diminished business value and prospects, particularly in the United States where OANN has its largest audience base. 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.

435. OANN's defamation campaign was a direct assault on the reputation that Smartmatic relied upon for its business value and prospects. OANN 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, OANN branded Smartmatic as a company whose technology and software meant elections were not secure, accurate or auditable.

436. OANN's branding of Smartmatic as 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. OANN's publications contributed to that negative impression.

437. On the other hand, individuals who were familiar with Smartmatic prior to the publication of OANN's defamatory statements 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, OANN'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. OANN's publications contributed to this constituency problem.

438. 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.²¹ Now, following OANN's publication of its defamatory statements, Smartmatic's business is valued at less than \$1 billion. The general and widespread publication and distribution of OANN's defamatory statements about Smartmatic were a substantial cause of a portion of this business valuation decline.

²¹ 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, Estonia, Taiwan, and the Philippines as well as branches in Colombia, Argentina, Honduras, Pakistan, Italy, Jamaica, and El Salvador.

439. Smartmatic sent retraction demand letters to OANN before filing this lawsuit. (12/11/20 Retraction Demand Letter to OANN (Exhibit 46); 10/27/21 Second Retraction Demand Letter to OANN (Exhibit 47).) OANN did not fully and completely retract its statements and implications.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Defamation for False Statements and Implications about Smartmatic)

440. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-439 of this Complaint as if fully stated herein.

441. OANN 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 184, 196, 205, 218, 227, 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 ¶171.)

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

443. These statements and implications were false for the reasons stated in paragraphs 180, 188–194, 199–203, 208–216, 221–225, 230–237.

444. 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.

445. 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 OANN.

446. 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.

447. 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.

448. OANN acted with fault, at least negligence, and with actual malice. OANN knew these defamatory statements and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when it broadcast, published, and republished them. The allegations related to OANN's actual malice include but are not limited to those pleaded in paragraphs 238–425.

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

450. OANN also failed to exercise due care to prevent the publication or utterance of these defamatory statements and implications during its broadcasts and publications.

451. Before filing this complaint, OANN provided notice to and demanded that OANN retract its false and defamatory statements and implications in a comparable time, place, and manner in which it broadcast, published and republished them. OANN failed to do so.

452. These false statements and implications by OANN 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.

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

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

SECOND CAUSE OF ACTION

(Injurious Falsehood for False Statements and Implications about Smartmatic's Election Technology and Software)

455. Smartmatic repeats, realleges, and incorporates by reference the allegations in paragraphs 1-439 of this Complaint as if fully stated herein.

456. OANN 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, including in Dominion's voting machine system, in the 2020 U.S. election, including in contested states where claims of election fraud were made; were used to fix, rig, and steal the 2020 U.S. election; were hacked or compromised during the 2020 U.S. election or while votes were sent abroad to be counted; and were designed to fix, rig, and steal elections and have been used to do so before. These false statements are pleaded in paragraphs 184, 196, 205, 218, 227, 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* ¶171.)

457. 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.

458. These statements and implications were false for the reasons stated in paragraphs 180, 188–194, 199–203, 208–216, 221–225, 230–237.

459. 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.

460. 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 OANN.

461. 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.

462. OANN acted with fault, at least negligence, and with actual malice. OANN knew these injurious falsehoods and implications were false, or recklessly disregarded the truth or falsity of the statements and implications, when it broadcast, published, and republished them. The allegations related to OANN's actual malice include but are not limited to those pleaded in paragraphs 238–425.

463. OANN 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.

464. OANN also failed to exercise due care to prevent the publication or utterance of these injurious falsehoods and implications during its broadcasts and publications.

465. Before filing this complaint, Smartmatic provided notice to and demanded that OANN retract its injurious falsehoods and implications in a comparable time, place, and manner in which it broadcast, published and republished them. OANN failed to do so.

466. These false statements and implications by OANN were a substantial factor in causing Smartmatic to suffer economic loss, and Smartmatic is thus entitled to compensatory damages.

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

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

PRAYER FOR RELIEF

469. Wherefore, Smartmatic prays for judgment against OANN for each of the causes of action raised herein. Smartmatic respectfully requests a judgment in its favor and against OANN 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; and

- g. 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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