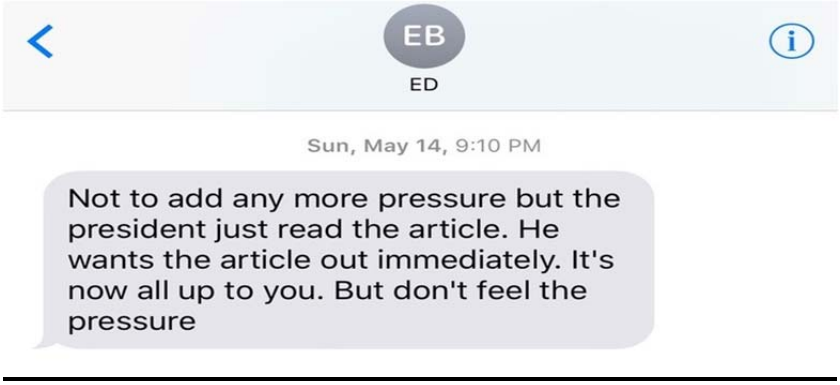
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROD WHEELER, Plaintiff, v. TWENTY-FIRST CENTURY FOX, INC., FOX NEWS NETWORK LLC, MALIA ZIMMERMAN, in her individual and professional capacities and ED BUTOWSKY, in his individual and professional capacities, Defendants.	Civil Action No.: **COMPLAINT** **Jury Trial Demanded**

PRELIMINARY STATEMENT

1. On May 14, 2017, Mr. Wheeler received the following text message from Defendant Ed Butowsky:



2. The "president" referred to in this text message is President Donald Trump. The "article" – which was published by Fox News's Malia Zimmerman less than 36 hours after this text message was sent – reported that a murdered Democratic National Committee ("DNC") staffer, Seth Rich, was the source of the now infamous DNC emails leaked by WikiLeaks during the 2016 Presidential primaries. The motivation behind the article: establish that Seth Rich provided WikiLeaks with the DNC emails to shift the blame from Russia and help put to bed

speculation that President Trump colluded with Russia in an attempt to influence the outcome of the Presidential election. Incredibly, according to Butowsky, the President reviewed an article written by a Fox News journalist prior to its publication and sought to get the article published "immediately." Indeed, just before Butowsky sent the text message above, he left a voicemail for Mr. Wheeler in which he said, "***A couple minutes ago I got a note that we have the full, uh, attention of the White House, on this. And, tomorrow, let's close this deal, whatever we've got to do. But you can feel free to say that the White House is onto this now.***"[1]

3. To lend support to this shift the blame theory, Zimmerman, with the knowledge and support of Butowsky, fabricated two quotations and attributed them to Mr. Wheeler:

- "'My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,' said Wheeler."
- "'My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,' Wheeler said. 'That is unfortunate. Seth Rich's murder is unsolved as a result of that.'"

4. Mr. Wheeler – who was the only named source quoted in the article – did not make these statements. According to Butowsky, the statements were falsely attributed to Mr. Wheeler because ***that is the way the President wanted the article***. Zimmerman, Butowsky and Fox had created fake news to advance President Trump's agenda. Mr. Wheeler was subsequently forced to correct the false record and, as a result, lost all credibility in the eyes of the public. Mr. Wheeler has suffered irreparable damage to his reputation and his career will likely never recover.

[1] Every quotation in this Complaint is from an email, text message, published news article and/or recorded or videotaped conversation.

5. Butowsky is a frequent contributor for Fox News and Fox Business Channel, an outspoken supporter of Donald Trump and opponent of Hillary Clinton, and a friend to former Press Secretary Sean Spicer and Chief Strategist Steve Bannon.

6. Mr. Wheeler is a former Washington D.C. Police homicide detective and current private investigative consultant, crime analyst and Fox News contributor.

7. In February 2017, Butowsky introduced himself to Mr. Wheeler and offered to bankroll an investigation into Seth Rich's murder. Butowsky explained that he was working with Zimmerman, an investigative journalist with Fox News who was conducting her own investigation into the death of Seth Rich.

8. As it turned out, Butowsky and Zimmerman were not simply Good Samaritans attempting to solve a murder. Rather, they were interested in advancing a political agenda for the Trump Administration. Specifically, it was their aim to have Mr. Wheeler confirm that: (i) Seth Rich was responsible for the leak of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.

9. Butowsky and Zimmerman hoped that, if they could confirm that Seth Rich leaked the DNC emails to WikiLeaks, that would debunk reports the Russians were responsible for the DNC hacks. In turn, Butowsky and Zimmerman hoped that, if they could shift the blame for the DNC hacks from the Russians to Seth Rich, this would undermine reports of collusion between Russia and the Trump Administration.

10. Butowsky and Zimmerman were not in this alone. Rather, in the weeks and months leading up to the publication of Zimmerman's May 16, 2017 article, Butowsky kept in regular contact with Trump Administration officials – including Mr. Spicer, Mr. Bannon and

Director of Public Affairs at the Department of Justice, Sarah Flores – regarding his efforts relating to Seth Rich.

11. As noted above, Butowsky informed Mr. Wheeler two days before Zimmerman's article came out that President Trump had read it and wanted it published "immediately."

12. Prior to that, Butowsky and Mr. Wheeler met with Mr. Spicer and provided him with a copy of Mr. Wheeler's investigative notes. Mr. Spicer asked to be kept abreast of developments and, upon information and belief, Butowsky did keep Mr. Spicer abreast of developments.

13. Then, very shortly after the article was published, Mr. Wheeler called Butowsky and demanded an explanation for the false statements about him in Zimmerman's article. Butowsky stated that ***the quotes were included because that is the way the President wanted the article***, referring to President Donald Trump.

14. A few days later, Butowsky wrote to Zimmerman, "***I didn't tell you yet but the federal government is involved at this moment, behind the scenes and believe your story.***"

15. The political motivations for the publication of Zimmerman's May 16, 2017 article also are evidenced by many statements made between February and May 2017, including, *inter alia*,

- When Butowsky was told by controversial journalist Seymour (Sy) Hersh of a purported FBI report establishing that Seth Rich sent emails to WikiLeaks, he stated: "***the most important thing is this. Everyone, there's so many people throughout Trump's four years and maybe eight years are always going to fall back on the idea that he is not legitimate and the Russians got him elected. This [information about Seth Rich providing emails to WikiLeaks] changes all of that.***"
- Butowsky also said that with this information, "***[w]e solve the problem about Russians are the ones that gave the emails because that did not happen. I know that did not happen.***"

- Just before midnight on May 15, 2017, the night before the Zimmerman article was published, Butowsky sent an email regarding Zimmerman's Seth Rich story to various Fox News producers and on air talent, including Steve Doocy, Gavin Hadden, Ainsley Earhardt and Brian Kilmeade. The email reads, in part: "If you have any questions about the story or more information needed, call me at 972-[XXX-XXXX]. I'm actually the one who's been putting this together but as you know I keep my name out of things because I have no credibility. ***One of the big conclusions we need to draw from this is that the Russians did not hack our computer systems and ste[a]l emails and there was no collusion like trump with the Russians.***"

- At approximately the same time, Butowsky sent a text message to Mr. Wheeler that reads, in part, "***[t]he narrative in the interviews you might use is that your and Malia's work prove that the Russians didn't hack into the DNC and steal the emails and impact our election.***"

- The next morning, Butowsky sent text messages to Mr. Wheeler that read, in part, "***If you can, try to highlight this puts the Russian hacking story to rest.***" "***Just reflecting: we need to emphasize the FBI has a report that has been suppressed that shows that Seth rich did this. With Comey recently being fired this will gain a lot of attention and it's true.***" "***The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead.***"

- Even after Mr. Wheeler confronted Zimmerman about her use of false quotes, Zimmerman sent a text to Mr. Wheeler that stated, "***Reread the story we sent to you last night [with the false quotes] and stick to that script.***"

16. Butowsky's reference to former FBI Director James Comey's termination is critical. On the morning of March 30, 2017, President Donald Trump called James Comey. During the call, the President described the Russia investigation as a cloud that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia and asked what could be done to lift the cloud. The President went on to say that if there were some "satellite" associates of his who did something wrong, it would be good to find that out, but that the President hadn't done anything wrong and hoped that Director Comey would find a way to get it

out that he was not being investigated. The Russia investigation continued and Director Comey was fired on May 9, 2017. http://www.cnn.com/2017/06/07/politics/james-comey-memos-testimony/index.html.

17. On May 10, 2017 – the day after President Trump fired Director Comey – Butowsky and Zimmerman called Mr. Wheeler to inform him that they had supposedly secured a source at the FBI who confirmed that emails were sent between Seth Rich and WikiLeaks. This anonymous source was cited in Zimmerman's May 16, 2017 article.

18. The following day, on May 11, 2017, Zimmerman sent Mr. Wheeler a draft of her story regarding the Seth Rich murder. The draft did not contain any quotes from Mr. Wheeler to the effect that Seth Rich had sent any emails to WikiLeaks, nor did the draft quote Mr. Wheeler as saying that the DNC, Democratic Party or Clintons were engaged in a cover-up.

19. Three days later, Butowsky informed Mr. Wheeler that President Trump had read Zimmerman's story and wanted it published "immediately." Upon information and belief, President Trump wanted Zimmerman's article published to help lift the cloud of the Russia investigation.

20. Less than 24 hours later, on May 15, 2017, Zimmerman informed Mr. Wheeler that she would be publishing her story imminently. The story was published the following morning with the false quotations from Mr. Wheeler that were clearly fabricated to lend support to the claim that Seth Rich, and not the Russians, was the source for the DNC emails released on WikiLeaks. Indeed, following the publication of the story, Zimmerman even admitted that the parts of the story regarding "the emails" and "the connection to Wikileaks" had not, in fact, come from Mr. Wheeler.

21. On May 23, 2017, Fox finally retracted Zimmerman's article and issued the following statement, "the May 16 story was not initially subjected to the high degree of editorial scrutiny we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed," the statement said. "We will continue to investigate this story and will provide updates as warranted."

22. However, Fox did not clear Mr. Wheeler's name and never admitted that Zimmerman had misquoted him. As such, Mr. Wheeler requested and attended a meeting with Dianne Brandi, Fox News's Executive Vice President, Legal and Business Affairs, and Jay Wallace, Fox News's Executive Vice President of News and Editorial. Mr. Wheeler explained to Ms. Brandi and Mr. Wallace that he had not provided Zimmerman with the quotations she used in her article. He also informed Ms. Brandi and Mr. Wallace that Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding WikiLeaks that she attributed to him in the article. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him, nor has Fox apologized to Mr. Wheeler.

23. In fact, <u>at the same time</u> that Fox was helping the Trump Administration divert public attention away from the Russian hacking scandal, Fox Executives were testifying under oath before British regulators about how equipped the Company is to control Sky plc ("Sky"), the British media conglomerate.

24. Specifically, Fox Executives, including Gerson Zweifach ("Zweifach"), General Counsel and Chief Compliance Officer of Twenty-First Century Fox, declared to British regulators that Fox is "fit and proper" to own Sky despite the attenuating power to influence the news agenda and the political process. On at least four occasions, March 27, 2017, April 11,

2017, May 11, 2017 and May 30, 2017, Zweifach and other Fox Executives met with officials in London in an attempt to convince them that Fox had in place procedures to ensure compliance with broadcasting standards to purchase Sky, and to alleviate concerns regarding Fox's ability to influence the media.

25. Shockingly, it is clear that simultaneous with such baseless claims of nonpartisanship, Fox was contriving with Butowsky and members of the Trump Administration to publish and disseminate fake news to affect politics in America.

26. Such devious scheming is precisely why British regulators have yet to provide a green light to Fox for the Sky takeover bid, and why many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.

27. The overt alliance between Rupert Murdoch's media conglomerate and Donald Trump is longstanding. Notwithstanding Ofcom's inquiries into Fox's ability to convey news in a nonpartisan manner, the collaboration appears only to have deepened since President Trump's Administration took over the White House. By way of example only, last week President Trump dined with Fox's star host Sean Hannity, former Fox co-president Bill Shine and now former White House communications director Anthony Scaramucci. According to The Washington Post, a senior White House official said that the four men met to "discuss overhauling the West Wing staff and [Trump's] political strategy." https://www.washingtonpost.com/news/post-politics/wp/2017/07/26/trump-dines-with-sean-hannity-ousted-fox-executive-bill-shine-and-scaramucci/?utm_term=.56065337c58a.

28. As a result of the abhorrent conduct described herein, Mr. Wheeler brings claims for defamation *per se* against Defendants Twenty-First Century Fox, Inc. ("21st Century Fox"),

Fox News Network LLC ("Fox News") (21st Century Fox and Fox News, together, "Fox"), Malia Zimmerman and Ed Butowsky.

29. Moreover, in addition to the above, Mr. Wheeler has been subjected to discrimination based upon his race, for which he brings claims under 42 U.S.C. § 1981.

JURISDICTION AND VENUE

30. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as Mr. Wheeler is a resident of the state of Maryland and: (i) Defendants Twenty-First Century Fox, Inc. and Fox News Network LLC are Delaware corporations with their principal place of business in New York County, New York; (ii) Defendant Malia Zimmerman resides in California; and (iii) Defendant Ed Butowsky resides in the state of Texas. Thus, there is complete diversity between Plaintiff and Defendants. In addition, pursuant to 28 U.S.C. § 1332(a), the amount in controversy, exclusive of costs and interest, is in excess of $75,000.

31. Additionally, this action involves federal questions regarding the deprivation of Plaintiff's rights under 42 U.S.C. § 1981 and thus subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1331.

32. This Court has supplemental subject matter jurisdiction over Plaintiff's related state and local law claims pursuant to 28 U.S.C. § 1367(a).

33. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this district.

ADMINISTRATIVE PROCEDURES

34. Simultaneous with this filing, Plaintiff will submit a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). After receiving his right to sue,

Plaintiff will seek to amend this Complaint to add claims for Fox's violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*. ("Title VII").

35. Plaintiff has complied with any and all other prerequisites to filing this action.

PARTIES

36. Plaintiff Rod Wheeler is a resident of the state of Maryland. Mr. Wheeler is a contributor with Fox. At all relevant times, Mr. Wheeler has met and continued to meet the definition of an "employee" of Fox under all applicable statutes.

37. Defendant Twenty-First Century Fox, Inc. is duly organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business at 1211 Avenue of the Americas, New York, New York. At all relevant times, Twenty-First Century Fox, Inc. has met the definition of an "employer" of Mr. Wheeler under all applicable statutes.

38. Defendant Fox News Network LLC is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and has its principal place of business at 1211 Avenue of the Americas, New York, New York. Fox News Network LLC is a wholly owned subsidiary of Twenty-First Century Fox, Inc. At all relevant times, Fox News Network LLC has met the definition of an "employer" of Mr. Wheeler under all applicable statutes.

39. Defendant Malia Zimmerman resides in Los Angles, California. Defendant Zimmerman is an investigative reporter at Fox.

40. Defendant Ed Butowsky resides in Addison, Texas. Defendant Butowsky, the Managing Partner of Chapwood Investments, LLC, is a frequent contributor to Fox News and Fox Business.

FACTS

I. ED BUTOWSKY

37. Ed Butowsky is a Dallas-based financial advisor and managing partner of Chapwood Investments, LLC.

38. Butowsky has worked extensively with Fox in the past, appearing as a contributor on the Fox News Channel and Fox Business News. He has appeared on Varney and Co., Closing Bell, Your World with Neil Cavuto, America Live with Megyn Kelly, the Willis Report and America's News HQ, as well as TheBlaze TV with Glenn Beck. http://www.edbutowsky.com /ed-butowsky/.

39. Butowsky also has close ties to Steve Bannon, the White House Chief Strategist and former Chief Executive Officer of Breitbart news. Of Bannon, Butowsky has said "I consider him a friend and a very nice man." https://www.buzzfeed.com/josephbernstein/the-man-behind-the-seth-rich-private-investigation-has-a?utm_term=.migyzVMXV#.yjdvOpb6p. According to *Buzzfeed*, Butowsky and Bannon met through Breitbart, where Butowsky was a contributor. In addition, Bannon has interviewed Butowsky for Breitbart Radio. Id.

40. Leading up to the 2016 election, Butowsky was a vocal supporter of President Donald Trump and an outspoken critic of Hillary Clinton. http://www.edbutowsky.com /vlog/i-voted-for/; https://www.youtube.com/watch?v=uSD2uJnbZCI. Butowsky attended President Trump's inauguration and recently uploaded to his Facebook page a photograph of him in the White House briefing room. http://www.nbcnews.com/politics/white-house/dnc-staffer-s-murder-draws-fresh-conspiracy-theories-n760186.

II. MALIA ZIMMERMAN

41. Malia Zimmerman is an investigative journalist at Fox News.

42. Prior to Fox, Zimmerman was the founder and President of the Hawaii Reporter. http://www.civilbeat.org/2015/01/editors-desk-hawaii-reporters-malia-zimmerman-bids-aloha/. The Hawaii Reporter was a news website funded primarily by Watchdog.org, part of the conservative Franklin Center for Government and Public Integrity. Id. Zimmerman left the Hawaii Reporter in January 2015 to work for Fox News. Id.

III. DEMOCRATIC NATIONAL COMMITTEE HACKING SCANDAL AND MURDER OF SETH RICH

43. News of the DNC hacking scandal broke on June 14, 2016 when the Washington Post reported that two groups working for the Russian government had accessed the DNC's computer network and was monitoring the DNC's emails and chat communications. https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff7-7b6c1998b7a0_story.html?hpid=hp_rhp-; http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html.

44. On July 22, 2016, WikiLeaks released nearly 20,000 emails from the accounts of seven DNC officials. The emails included controversial statements from former DNC Chairwoman, Debbie Wasserman Schultz, indicating bias on the part of the Democratic Party against Bernie Sanders and in favor of Hillary Clinton. http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html.

45. On October 7, 2016, the Department of Homeland Security released a statement that said that the U.S. Intelligence Community ("USIC") was "confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations." https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national. Subsequently, in

December 2016, the CIA and FBI both determined that Russia hacked the DNC and that Russia sought to help President Donald Trump win the White House. https://www.washingtonpost.com/graphics/2017/world/national-security/russia-hacking-timeline/?utm_term=.06444bce83f0.

46. Seth Rich, a 27-year old DNC Staffer, was murdered on July 10, 2016. Police determined that the murder occurred in the course of a botched robbery.

47. By the end of August 2016, a number of individuals theorized that Seth Rich – and not the Russians – was actually WikiLeaks' source for the DNC emails published on July 22, 2016. http://insider.foxnews.com/2016/08/25/assange-refers-murdered-dnc-staffer-alleged-potential-wikileaks-source. On August 9, 2016, Julian Assange, the founder of WikiLeaks, made numerous cryptic statements regarding Seth Rich's potential role as the source of the DNC emails to WikiLeaks. Id. These comments fueled a growing conspiracy theory on Twitter, and later on message boards on Reddit and 4chan that Seth Rich's death was connected to the DNC. http://www.latimes.com/business/hollywood/la-fi-ct-seth-rich-conspiracy-20170523-htmlstory.html.

IV. THE "CLOUD" OF THE RUSSIA INVESTIGATION

48. On the morning of March 30, 2017, President Donald Trump called then FBI Director James Comey. During the call, the President described the Russia investigation as a cloud that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia and asked what could be done to lift the cloud. The President went on to say that if there were some "satellite" associates of his who did something wrong, it would be good to find that out, but that the President hadn't done anything wrong and hoped that Director Comey would find a way to get it out that he was not being investigated. Director Comey was fired on May 9, 2017. http://www.cnn.com/2017/06/07/politics/james-comey-memos-testimony/index.html.

V. BUTOWSKY RECRUITS MR. WHEELER TO INVESTIGATE THE MURDER OF SETH RICH

49. Mr. Wheeler is a former Washington D.C. Police homicide detective and current private investigation consultant, crime analyst and Fox News contributor.

50. On February 23, 2017, Mr. Wheeler received a text message from Butowsky. The message – which was the first communication Mr. Wheeler ever had with Butowsky – read:

> "I appreciate you reading this text message. We have many mutual friends including Adam Housley and many others from Fox News. Although I'm not a paid fox contributor, I do appear frequently on the News channel as well as the business channel. I watched your work for years and admire what you wearing [*sic*] on television. Behind the scenes I do a lot of work, (unpaid) helping to uncover certain stories, my biggest work was revealing most of what we know today about Benghazi. I'm looking for some assistance on something that happened in Washington I would appreciate if you would give me a call at 972.XXX.XXXX. Of all the people you have met in your line of work you have put me right next to those you view as the most confidential. I am extremely discreet. Is there a time I can give you a call this morning?"

51. Shortly thereafter, Mr. Wheeler called Butowsky and spoke with him for approximately 20 minutes. Butowsky stated that he was calling to enlist Mr. Wheeler to conduct an investigation into the Seth Rich murder. Butowsky explained that the Rich family was looking to engage an investigator (Mr. Wheeler), and that Butowsky had agreed to foot the bill. Mr. Wheeler informed Butowsky that although he did vaguely recall the details of the murder, it was Mr. Wheeler's impression that the case was a botched robbery as the Washington D.C. police had previously reported. Mr. Wheeler informed Butowsky that he would be delighted to assist the Rich family and try to identify a suspect.

52. As it turned out, Butowsky and Zimmerman (who Mr. Wheeler later learned was working with Butowsky) were not simply Good Samaritans attempting to solve a murder. Rather, Butowsky and Zimmerman were interested in advancing a political agenda. Specifically,

it was their aim to have Mr. Wheeler's investigation confirm that: (i) Seth Rich was responsible for the leaks of DNC emails to WikiLeaks; and (ii) Seth Rich was murdered by a Democrat operative because he leaked the emails to WikiLeaks.

53. Butowsky and Zimmerman hoped that, if Mr. Wheeler could confirm that Seth Rich leaked the DNC emails to WikiLeaks, that would debunk reports the Russians were responsible for the DNC hacks. In turn, Butowsky and Zimmerman hoped that, if Mr. Wheeler could shift the blame for the DNC hacks from the Russians to Seth Rich, this would undermine reports of collusion between Russia and the Trump Administration.

54. Indeed, before Butowsky ever contacted Mr. Wheeler, he had already had a conversation on this topic with Seymour (Sy) Hersh. Mr. Hersh is an American investigative journalist who is notorious for using anonymous sources and is responsible for publishing a number of highly controversial stories.

55. During his conversation with Butowsky, Mr. Hersh claimed that he had received information from an "FBI report." Mr. Hersh had not seen the report himself, but explained: "I have somebody on the inside who will go and read a file for me. And I know this person is unbelievably accurate and careful. He's a very high level guy."

56. According to Mr. Hersh, his source told him that the FBI report states that, shortly after Seth Rich's murder, the D.C. police obtained a warrant to search his home. When they arrived at the home, the D.C. police found Seth Rich's computer, but were unable to access it. The computer was then provided to the D.C. police Cyber Unit, who also were unable to access the computer. At that point, the D.C. police contacted the Cyber Unit at the FBI's Washington D.C. field office. Again, according to the supposed FBI report, the Washington D.C. field office was able to get into the computer and found that in "late spring early summer [2016], [Seth Rich]

[made] contact with Wikileaks." "They found what he had done. He had submitted a series of documents, of emails. Some juicy emails from the DNC." Mr. Hersh told Butowsky that Seth Rich "offered a sample [to WikiLeaks][,] an extensive sample, you know I'm sure dozens, of emails, and said I want money."

57. Among other things, during the conversation Butowsky said, "***the most important thing is this. Everyone, there's so many people throughout Trump's four years and maybe eight years are always going to fall back on the idea that he is not legitimate and the Russians got him elected. This [information about Seth Rich providing emails to WikiLeaks] changes all of that.***" He also said that with this information, ***"[w]e solve the problem about Russians are the ones that gave the emails because that did not happen. I know that did not happen.***" Finally, Butowsky told Mr. Hersh, "You don't have to go to the White House, but I have a great history of getting things, of getting things out there without people knowing that I'm the one who did it." Mr. Hersh cautioned Butowsky that the information was not necessarily true, and that, even if true, it did not preclude the possibility that the Russians also hacked the DNC.

58. In addition, throughout March 2017, Butowsky exhibited a great deal of anxiety with Jack Burkman, a Republican lobbyist who claimed to have evidence that Seth Rich was killed by Russian operatives after Seth Rich discovered that the Russians had hacked the DNC. Obviously this narrative would contradict the story Butowsky wanted to write, and on March 2, 2017, Butowsky asked Zimmerman for Mr. Burkman's contact information and stated, "***I need to shut him up.***" As Mr. Burkman began to gain additional notoriety, Butowsky's anxiety grew. On March 23, 2017, immediately after the Rich family announced that Burkman was involved in setting up a go-fund-me page to assist in investigating the Seth Rich murder, Butowsky wrote to Mr. Wheeler, "I am having a huge anxiety over Burkman today."

59. On Tuesday, February 28, 2017 Mr. Wheeler met with Butowsky at a restaurant on Capitol Hill in Washington D.C. When Mr. Wheeler arrived, he was surprised to find that Butowsky was accompanied by Zimmerman. Butowsky advised Mr. Wheeler that Zimmerman was an investigative journalist with Fox News, and had been investigating the death of Seth Rich for several months.

60. Following their lunch, Butowsky introduced Mr. Wheeler to the Rich family. However, before doing so, Butowsky warned Mr. Wheeler: "Make sure to play down Fox News, don't mention you know Malia [Zimmerman]."

61. Over the course of the following weeks, Mr. Wheeler had multiple conversations with the Rich family regarding his retention. Mr. Wheeler spoke during this time with Seth's father, Joel, Seth's mother, Mary, and Seth's brother, Aaron.

62. On March 14, 2017, the Rich family formally retained Mr. Wheeler to investigate the murder of Seth Rich. Butowsky wired $5,000 to Mr. Wheeler as an up-front payment for the investigation. Rather than use his own bank account to send the wire, Butowsky used an account in the name of "GOOGIE, LP."

VII. APRIL 2017

66. On April 18, 2017, Butowsky sent a text message to Mr. Wheeler that stated: "***Are you in Washington DC area on Thursday afternoon? I am meeting Sean spicer and want you with me.***" Butowsky's purpose in meeting with Mr. Spicer, President Trump's former press secretary, was to keep him abreast of his investigation of the Seth Rich murder. Indeed, on April 19, 2017, Butowsky sent the following text message to Mr. Wheeler: "***Do you have summary done yet?[ ] Just bulletpointed. Just want to make sure we get point to Sean easily.***" Butowsky and Mr. Wheeler did in fact meet with Mr. Spicer on April 20, 2017 to keep him

informed about the Seth Rich murder investigation. Mr. Spicer was provided with a copy of Mr. Wheeler's investigative narrative and asked Butowsky and Mr. Wheeler to keep him abreast of any developments in the case. Upon information and belief, Butowsky did just that.

67. On April 19, the day before Butowsky and Mr. Wheeler met with Mr. Spicer, Mr. Wheeler met with Sarah Flores, the Director of Public Affairs at the Department of Justice ("DOJ"). Although Mr. Wheeler's meeting did not concern Seth Rich, ***unbeknownst to Mr. Wheeler at the time, Butowsky had already reached out to talk with Ms. Flores about the Seth Rich murder "investigation."*** Butowsky sent a text message to Mr. Wheeler that stated: "She [Ms. Flores] knows me well. Tell her I said hello. Let her know why I was calling her, Seth Rich. Ask her to keep it quiet because we don't know [ ] who the good or the bad people are anymore. But we know she's one of the really good ones."

68. Mr. Wheeler was able to secure an interview with Detective Della-Camera, with the Washington D.C. Metro Police Department on April 24, 2017. Detective Della-Camera is the lead homicide detective on the Seth Rich case. The night before the interview, Mr. Wheeler received an email from Butowsky that stated: "Della camera is either helping us or we will go after him as being part of the coverup."

69. Mr. Wheeler eventually met with Detective Della-Camera on April 25, 2017. Detective Della-Camera confirmed that he still believed that Seth Rich's murder was the result of a robbery gone bad. Detective Della-Camera also stated that he had nothing to say or to show that the shooting was related to emails or anything other than a street robbery. Detective Della-Camera also stated that he had no knowledge of any FBI involvement with the Seth Rich murder investigation. Finally, Detective Della-Camera stated that he did not have anything pointing the finger at the DNC other than the conspiracy theories.

VIII. MAY 10, 2017 TO MAY 15, 2017

70. On May 10, 2017 – ***the day after President Trump fired Director Comey*** – Butowsky and Zimmerman called Mr. Wheeler to inform him that they had supposedly secured a source at the FBI who confirmed that emails were sent between Seth Rich and WikiLeaks.

71. The following day, on May 11, 2017, Zimmerman sent Mr. Wheeler a draft of her story regarding the Seth Rich murder. The draft did not contain any quotes from Mr. Wheeler to the effect that Seth Rich had sent any emails to WikiLeaks, nor did the draft quote Mr. Wheeler as saying that the DNC, Democratic Party or Clintons were engaged in a cover-up.

72. On May 14, 2017, Butowsky – who at that point was pressuring Mr. Wheeler to complete his investigation – sent a text message to Mr. Wheeler that stated:

> "***Not to add any more pressure but the president [Donald Trump] just read the article. He wants the article out immediately. It's now all up to you. But don't feel the pressure***"

73. This text message was sent less than one week after President Trump fired Director Comey. Upon information and belief, President Trump wanted Zimmerman's article published to help lift the cloud of the Russia investigation.

74. Moreover, just before Butowsky sent the text message above, he left a voicemail for Mr. Wheeler in which he said, "***A couple minutes ago I got a note that we have the full, uh, attention of the White House, on this. And, tomorrow, let's close this deal, whatever we've got to do. But you can feel free to say that the White House is onto this now.***"

75. Less than 24 hours later, on May 15, 2017, Zimmerman informed Mr. Wheeler that she would be publishing her story imminently.

76. Mr. Wheeler explained to Zimmerman he was traveling and could not review the drafts of the story she sent to him throughout the day. Zimmerman asked Mr. Wheeler for

certain additional quotes to add to her story, and Mr. Wheeler provided them in writing. Specifically, Zimmerman asked Mr. Wheeler for a quote regarding Debbie Wasserman Schultz and Donna Brazile, two former Chairs of the DNC who apparently called Detective Della-Camera to inquire as to why Mr. Wheeler was investigating the Seth Rich murder. Mr. Wheeler provided a quote – in writing – regarding Ms. Wasserman Schultz and Ms. Brazile. Mr. Wheeler followed up with a separate quote – also in writing – later that evening.

77. At no point in time did Mr. Wheeler say that his investigation revealed that Seth Rich sent any emails to WikiLeaks, nor did he say that the DNC, Democratic Party or Clintons were engaged in a cover-up. In fact, the only purported source saying that Seth Rich sent any emails to WikiLeaks was Butowsky and Zimmerman's supposed source within the FBI. Mr. Wheeler had never even spoken with this individual, to the extent he or she even exists. In fact, when Mr. Wheeler was interviewed by a Fox affiliate on the evening of May 15, 2017, he made sure not to confirm as fact the proposition that Seth Rich sent emails to WikiLeaks, instead confirming only that a "source" (*i.e.*, Zimmerman's and Butowsky's alleged source) had information that could link Seth Rich to WikiLeaks.

78. Later in the evening on May 15, 2017, at 10:55 p.m. CDT, Butowsky sent an email regarding Zimmerman's Seth Rich story to various Fox News producers and on air talent, including Steve Doocy, Gavin Hadden, Ainsley Earhardt and Brian Kilmeade. The email reads:

> "The story is up or will be up very early tomorrow morning. Rod Wheeler is up and ready to give interviews. There's more to come on the story but for now this is a massive story there's [*sic*] going to be talked about for a long time. If you have any questions about the story or more information needed, call me at 972-XXX-XXXX. I'm actually the one who's been putting this together but as you know I keep my name out of things because I have no credibility. ***One of the big conclusions we need to draw from this is that the Russians did not hack our computer systems and***

ste[a]l emails and there was no collusion like trump with the Russians."

79. At approximately the same time, Butowsky sent a text message to Mr. Wheeler that reads, in part, "***[t]he narrative in the interviews you might use is that your and Malia's work prove that the Russians didn't hack into the DNC and steal the emails and impact our election.***"

IX. MAY 16, 2017

79. On the morning of May 16, 2017, Zimmerman published her article on the Seth Rich murder investigation. The article attributed two quotations to Mr. Wheeler relevant to this action.

80. First, the article falsely quoted Mr. Wheeler as stating: "My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks." Mr. Wheeler did not provide this quote or make this statement.

81. Second, the article falsely quoted Mr. Wheeler as stating: "My investigation shows someone within the D.C. government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward," "That is unfortunate. Seth Rich's murder is unsolved as a result of that." Again, Mr. Wheeler did not provide this quote or make this statement.

82. In falsely quoting Mr. Wheeler, Butowsky and Zimmerman attempted – through the publication of fake news – to accomplish what they had set out to do from the start: "solve the problem about Russians are the ones that gave the emails" and establish that "there was no collusion like trump with the Russians."

83. Indeed, on the morning that the story was published, Butowsky sent the following text messages to Mr. Wheeler:

> "***If you can, try to highlight this puts the Russian hacking story to rest***"
>
> "***Just reflecting: we need to emphasize the FBI has a report that has been suppressed that shows that Seth rich did this. With Comey recently being fired this will gain a lot of attention and it's true.***" Separately the DC police department has the same information and was told to drop the case.
>
> "***The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead.***"

84. Very shortly after the article was published, Mr. Wheeler called Butowsky and demanded an explanation for the false statements about him in Zimmerman's article. Butowsky stated that ***the quotes were included because that is the way the President wanted the article***, referring to President Donald Trump. A few days later, Butowsky wrote to Zimmerman, "***I didn't tell you yet but the federal government is involved at this moment, behind the scenes and believe your story.***"

85. Also on May 16, 2017, Mr. Wheeler called Zimmerman and confronted her about the use of false statements. Zimmerman told Mr. Wheeler that she would have the statements removed from the article. However, they were not removed and, later that day, Zimmerman told Mr. Wheeler that she had been instructed by her bosses at Fox News to leave the false quotes in the story.

86. Later that day, Mr. Wheeler informed various media outlets that he had been misquoted and made clear that he had not seen any emails between Seth Rich and WikiLeaks, nor had he ever even seen Seth Rich's computer.

87. Following Mr. Wheeler's disclosures and in advance of Mr. Wheeler's planned appearance on the Sean Hannity Show, Zimmerman sent a text to Mr. Wheeler that stated, "***Reread the story we sent to you last night [with the false quotes] and stick to that script.***"

88. Even weeks later, Butowsky chastised Mr. Wheeler by stating that because Mr. Wheeler refused to confirm the substance of the Zimmerman article: "You have helped the left win this." This further exposes Butowsky's political motivations for assisting in the publication of the defamatory news article.

X. ZIMMERMAN ADMITS THAT MR. WHEELER DID NOT PROVIDE THE QUOTES ATTRIBUTED TO HIM IN THE MAY 16, 2017 ARTICLE

89. Following the publication of the May 16, 2017 article, the Rich family issued a statement condemning Zimmerman's article and Mr. Wheeler. Zimmerman responded by sending an email to Joel Rich that reads, in part, "As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you." In sum, Zimmerman doubled down on the defamatory comments she published about Mr. Wheeler. Indeed, Joel Rich responded with an email accusing Mr. Wheeler of making false statements. According to Butowsky, Zimmerman's bosses at Fox News reviewed the email she sent to Joel Rich and edited it before it was sent.

90. Mr. Wheeler confronted Zimmerman again about her false statements, as well as her false claim to Joel Rich that "much of the information" for her article came from Mr. Wheeler. Mr. Wheeler stated: "I kinda came across a response Malia that you had to Joel . . . the thing that I'm a little concerned about is that it says 'as you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you.'" Zimmerman responded, "that's the email that Fox asked me to send him. They wrote it for me and they told me to send it to him." Mr. Wheeler challenged her: "But that's not accurate though because much, much of the information did not come from me." In response, Zimmerman admitted: "Umm, well not not not . . . ***Not the part about the emails. Not the part about, I mean about the connection to WikiLeaks***, but the rest of the quotes in the story did. A lot of the

quotes in the story did." Later in the same conversation, Butowsky also conceded that the quotes were not made by Mr. Wheeler: "***[O]ne day you're going to win an award for having said those things you didn't say.***" Indeed, in another conversation, Mr. Butowsky read, from the article, to Mr. Wheeler: "my investigation up to this point shows that there was some degree of emails exchanged between Seth Rich and Wikileaks." Butowsky then said, "***Well I know that's not true . . . I've never heard you say that.***" "***If I'm under oath, I would say I never heard him say that.***"

91. Despite this, Zimmerman and Butowsky continued to push Mr. Wheeler to support Fox News and the Zimmerman story. Zimmerman and Butowsky, on behalf of Mr. Wheeler, drafted a response to the Rich family's statements. Mr. Wheeler did not write or approve the response. Nevertheless, without Mr. Wheeler's knowledge, Zimmerman sent the response to her Fox News colleagues and Butowsky posted the response on his Facebook page.

92. The response was posted to Butowsky's Facebook page on or about May 20, 2017. Mr. Wheeler called Butowsky and asked him about the unauthorized posting of the fabricated response. Butowsky apologized and admitted that he did not have permission to post the response. Later in the same call, Butowsky told Mr. Wheeler that the situation would be a "***nightmare that ends, and holy shit look how many phone calls I'm getting congratulating me and thanking me for putting an end to the Russian bullshit.*** [ ] That's where this is gonna end up." Again, Butowsky revealed his political motivations for assisting in the publication of the defamatory news article.

XI. MR. WHEELER REPORTS ZIMMERMAN AND BUTOWSKY'S CONDUCT TO DIANNE BRANDI AND JAY WALLACE

93. On May 23, 2017, Fox finally retracted Zimmerman's article and issued the following, "the May 16 story was not initially subjected to the high degree of editorial scrutiny

we require for all our reporting. Upon appropriate review, the article was found not to meet those standards and has since been removed," the statement said. "We will continue to investigate this story and will provide updates as warranted."

94. However, Fox did not clear Mr. Wheeler's name and never admitted that Zimmerman had misquoted him. As such, Mr. Wheeler requested and attended a meeting with Ms. Brandi and Jay Wallace, Fox News's Executive Vice President of News and Editorial. Mr. Wheeler explained to Ms. Brandi and Mr. Wallace that he had not provided Zimmerman with the quotations she used in her article. He also informed Ms. Brandi and Mr. Wallace that Zimmerman had admitted that Mr. Wheeler had not provided her the information regarding WikiLeaks that she attributed to him in the article. Nevertheless, to this day Fox has not issued any statement admitting that the quotes attributed to Mr. Wheeler were not made by him.

XII. FOX EXECUTIVES DISINGENUOUSLY TESTIFY TO U.K. REGULATORS THAT FOX IS "FIT AND PROPER" TO LEAD SKY PLC

95. At the same time that Butowsky enticed Mr. Wheeler into investigating the death of Seth Rich, and while Zimmerman was writing the article that Fox approved and published on May 16, 2017, Fox Executives were testifying in London before British regulators to help secure Fox's bid to control Sky. Sky, the British media conglomerate, delivers internet, television and mobile services to more than 22 million customers in the U.K., Ireland, Germany, Austria and Italy. Fox, which holds a 39% stake in Sky, announced in December 2016 its bid to purchase the remaining shares for $11.1 billion.

96. As part of the U.K.'s takeover rules, government officials referred Fox's takeover bid to Ofcom, the communications regulation agency tasked with investigating Fox and issuing a report as to whether Fox had a "commitment to broadcasting standards." As part of the

regulators' inquiry, attention was focused on whether Fox was "fit and proper" to exert such enormous influence over U.K.'s news and media industries.

97. In an effort to convince regulators that Fox was in compliance with the rules, senior executives from Fox participated in meetings with Ofcom investigators and provided testimony under oath. Specifically, Fox Executives, including Zweifach, met with regulators in London on March 27, 2017, April 11, 2017, May 11, 2017 and May 30, 2017, to alleviate concerns regarding Fox's ability to influence the media.

98. Despite public claims that Fox Executives were completely transparent during the Ofcom investigation, upon information and belief, Fox Executives failed to disclose the facts regarding Fox's role in the effort to influence American politics by disseminating Zimmerman's story.

99. Clearly, senior level producers at Fox, as well as Ms. Brandi and Mr. Wallace, were aware of the fact that Zimmerman's article, while unsubstantiated, provided support to the Trump Administration's desire to divert attention from the Russian email hacking scandal.

100. It is hard to imagine a clearer example of Fox's willingness and determination to influence the news agenda and the political process than a situation where it knowingly generates and publishes fake news to further its own political agenda.

101. Such devious scheming is precisely why British regulators have yet to provide a green light to Fox for the Sky takeover bid, and why many U.K. politicians question whether Fox is capable of news dissemination in a fair and neutral manner.

102. Upon information and belief, Fox owes a continuing duty to report any relevant information to U.K. regulators that impacts the analysis of whether the Company is "fit and proper" to own Sky.

XIII. BUTOWSKY PLANS TO EXTORT SY HERSH IN AN EFFORT TO "SAVE" THE MAY 16, 2017 STORY

103. During a May 19, 2017 telephone call between Butowsky and Mr. Wheeler, Butowsky revealed his plan to extort Sy Hersh in an effort to save the May 16, 2017 Seth Rich story. Specifically, Butowsky stated:

> "What I'm really good at is going on the offensive, okay. Once we assess the situation, so I've got a friend of mine from high school that does a lot of crises management stuff but we both think a lot alike. I sent him the Sy Hersh redacted where it's just his voice. He is going to record five seconds of Sy's voice. He's emailing Sy. That email is going to contain that five seconds and, he's going to say, you have three hours to write back who at the FBI you spoke to, with his name, that read you the Seth Rich report. If you don't give us that in three hours, a full recording of everything we have will be at every news agency tonight with your name and phone number on it. If you give it to us, you will never hear from us again."

Butowsky then claimed that he had Mr. Hersh's "balls in a noose." Once the name of the supposed FBI agent was revealed, Butowsky planned to "publish it every fucking place and say, hey guys, guess what, this man has the report, go call him."

XIV. MR. WHEELER'S REPUTATION IS DESTROYED BY DEFENDANTS' DECISION TO DEFAME HIM

104. Following the publication of Zimmerman's article, and precisely because of the defamatory statements therein, Mr. Wheeler's reputation as an objective, credible and intelligent investigator with integrity was completely destroyed. Among many, many comments evidencing this fact are the following:

- The New York Times reported that Mr. Wheeler has given "shifting and contradictory accounts" regarding Seth Rich's connection with WikiLeaks. https://www.nytimes.com/2017/05/17/us/seth-rich-dnc-wikileaks.html.

- The New York Times reported that "The Rich family regrets hiring Mr. Wheeler and has objected to his many public comments" and that "Aaron Rich, Mr. Rich's brother, said in an email Wednesday that Mr. Wheeler has 'Discredited himself as an objective investigator' and had lost the confidence of the family. He said that the politicization of his brother's death had been 'painful' and 'debilitating.'" https://www.nytimes.com/2017/05/17/us/seth-rich-dnc-wikileaks.html.

- GQ reported: "Here's how the story unraveled. Wheeler, it turns out, is a verifiable dipshit." http://www.gq.com/story/fox-news-seth-rich-conspiracy-theory.

- MSNBC referred to Mr. Wheeler as a "blabbing detective." http://www.nbcnews.com/politics/justice-department/slain-dnc-staffer-s-family-orders-blabbing-detective-cease-desist-n762211.

- The Washington Post reported that the Rich family said that Mr. Wheeler had "peddled politicized conspiracy theories." https://www.washingtonpost.com/local/public-safety/family-of-slain-dnc-staffer-fights-back-against-conpiracy-theories-with-cease-and-desist-letter/2017/05/20/6da279c2-3d6f-11e7-8854-21f359183e8c_story.html?utm_term=.36a01d101420.

105. Moreover, the fact that Mr. Wheeler had to correct the record resulted in many media outlets and commentators declaring that Mr. Wheeler had backtracked on his story and statements about Seth Rich, destroying his credibility. Of course, Mr. Wheeler only had to backtrack on his purported statements because he never made the statements to begin with.

XV. MR. WHEELER IS FURTHER DEFAMED

106. On June 23, 2017, Mr. Wheeler put Defendants on notice of his decision to seek legal counsel and assert claims against Defendants.

107. On June 26, 2017, Butowsky tweeted: "Fox News story was pulled b/c Rod Wheeler said [he] didn't say a quote . . . How much did DNC pay him?" This statement was false.

108. On the same day, Butowsky also tweeted: "This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn't say ???" This statement was false.

XVI. FOX NEWS DISCRIMINATES AGAINST MR. WHEELER BASED ON RACE

109. Mr. Wheeler, who is Black, was hired by Fox as a contributor in 2005. Mr. Wheeler is not a full time employee and, as such, is paid a set amount for each appearance he makes on Fox programming rather than a set salary. Further, Mr. Wheeler is not provided benefits by Fox.

110. Throughout his career with Fox, Mr. Wheeler's white colleagues with comparable or inferior skills, expertise and experience have received more air time, made more appearances and been hired into full time positions. As a result, these white colleagues make more money, receive more notoriety and, in many cases, receive valuable benefits.

111. Examples include Bo Dietel, Mark Furman, Steve Rogers, Pat Bronson and Griff Jenkins.

112. Meanwhile, Mr. Wheeler's career has remained stagnant for 12 years despite his repeated requests to be hired full time. As recently as April 2017, Mr. Wheeler made the same request to Ms. Brandi. As usual, she responded by saying she would "check into this and get back to you," but has failed to do so.

113. Fox's marginalization of Mr. Wheeler is simply part of its systemic pattern and practice of discriminating against people of color. Indeed, since, March 2017, no fewer than 16 Fox News employees of color have sued Fox News for race discrimination and/or filed charges of discrimination with the EEOC.

FIRST CAUSE OF ACTION
(Defamation *per se*)
Against Twenty-First Century Fox, Inc., Fox News Network LLC, Malia Zimmerman and Ed Butowsky

114. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

115. Fox, Zimmerman and Butowsky issued, approved, endorsed and/or ratified defamatory statements about Plaintiff; specifically:

- "'My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks,' said Wheeler." This statement was made on May 16, 2017.
- "'My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,' Wheeler said. 'That is unfortunate. Seth Rich's murder is unsolved as a result of that.'" This statement was made on May 16, 2017.

116. Fox, Zimmerman and Butowsky knew that the statements attributed to Mr. Wheeler were not said by him and/or published the statements with reckless disregard for their truth.

117. Further, on or about May 16, 2017, Zimmerman told Joel Rich: "As you know, much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of you." This statement is false.

118. Further, on June 26, 2017, Butowsky tweeted: "Fox News story was pulled b/c Rod Wheeler said [he] didn't say a quote . . . How much did DNC pay him?" This statement is false.

119. On the same day, Butowsky tweeted: "This shows Rod Wheeler has a major battle with the truth. Everyone needs to hear this. He says the precise words he swears he didn't say ???" This statement is false.

120. Plaintiff has suffered harm as a result of the defamatory statements, including, but not limited to, reputational harm, emotional distress and mental anguish, and the statement was defamatory *per se*. As such, Plaintiff is entitled to monetary and punitive damages.

SECOND CAUSE OF ACTION
(Race, Color and Ethnicity Discrimination in Violation of 42 U.S.C. § 1981)
Against Twenty-First Century Fox, Inc. and Fox News Network LLC

121. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation in each of the preceding paragraphs as if fully set forth herein.

122. Fox has discriminated against Plaintiff on the basis of his race, color, ethnicity and/or national origin in violation of 42 U.S.C. § 1981 by, *inter alia*, denying Plaintiff equal terms and conditions of employment available to similarly-situated White employees, including, but not limited to, refusing to hire Plaintiff to a full time position because of his race, color, ethnicity and/or national origin and paying Plaintiff less than similarly-situated White employees because of his race, color, ethnicity and/or national origin.

123. As a direct and proximate result of Fox's unlawful discriminatory conduct in violation of the 42 U.S.C. § 1981, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm, for which he is entitled to an award of damages.

124. As a direct and proximate result of Fox's unlawful discriminatory conduct in violation of the 42 U.S.C. § 1981, Plaintiff has suffered, and continues to suffer, mental anguish and emotional distress, for which he is entitled to an award of damages.

125. Fox's unlawful discriminatory actions constitute malicious, willful and wanton violations of the 42 U.S.C. § 1981, for which Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

A. An injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the defamation and discriminatory policies and practices complained of herein;

B. An order directing Defendants to place Plaintiff in the position he would have occupied but for Defendants' defamatory and discriminatory conduct, and to take such affirmative action as is necessary to ensure that the effects of this unlawful conduct are eliminated and do not continue to affect Plaintiff;

C. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United Stated, as well as the State and City of New York;

D. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for all monetary and/or economic damages;

E. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for his mental anguish and emotional distress, emotional pain and suffering and any other physical and mental injuries;

F. An award of damages to be determined at trial, plus pre-judgment interest, to compensate Plaintiff for harm to his professional and personal reputation and loss of career fulfillment and earnings;

G. An award of punitive damages;

H. An award of costs that Plaintiff has incurred in this action, as well as reasonable attorneys' fees to the fullest extent permitted by law; and

I. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: August 1, 2017
New York, New York

Respectfully submitted,

WIGDOR LLP

By: _____

Douglas H. Wigdor
Jeanne M. Christensen
Michael J. Willemin

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
dwigdor@wigdorlaw.com
jchristensen@wigdorlaw.com
mwillemin@wigdorlaw.com

Counsel for Plaintiff