

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
JOEL RICH and MARY RICH,	:	Civil Action No. 18-cv-2223
	:	
Plaintiffs,	:	
	:	
v.	:	<u>AMENDED COMPLAINT</u>
	:	
FOX NEWS NETWORK, LLC, MALIA	:	
ZIMMERMAN in her individual and professional	:	
capacities, and ED BUTOWSKY, in his individual	:	
and professional capacities,	:	<u>Jury Trial Demanded</u>
	:	
Defendants.	:	
-----	X	

PLAINTIFFS Joel Rich and Mary Rich, by and through Massey & Gail LLP and Susman Godfrey LLP, their undersigned attorneys, bring this Complaint against Defendants, and in support state:

INTRODUCTION

1. Joel and Mary Rich, grieving parents of a murdered child, seek justice for having become collateral damage in a political war to which they are innocent bystanders.

2. In July 2016, Seth Rich, a young Democratic National Committee (“DNC”) employee, was murdered in the streets of Washington, D.C., in what authorities have stated publicly was a botched robbery. Fox News, Fox reporter Malia Zimmerman, and Fox News contributor and political operative Ed Butowsky intentionally exploited this tragedy—including through lies, misrepresentations, and half-truths—with disregard for the obvious harm that their actions would cause Joel and Mary.

3. Fox News, Fox reporter Zimmerman, and Fox News contributor and political operative Butowsky thought much could be made of the fact that Seth was a DNC employee. They induced Joel and Mary, his parents, to hire Rod Wheeler, a purportedly independent investigator, to

help “solve” their son’s murder. Defendants worked with Wheeler to pursue and develop a fiction that Seth had leaked thousands of DNC emails to WikiLeaks. And they published, republished, and publicized the sham story—which they knew would be covered again and again, and republished, here and around the world—painting Joel and Mary’s son as a criminal and a traitor to the United States.

4. Defendants also intentionally made it appear that Joel and Mary were involved in and confirmed the substance of this smear campaign.

5. Defendants’ actions have precipitated broad outrage, regardless of political affiliation, including from internal Fox personnel and Fox advertisers. Defendants’ conduct was extreme and outrageous.

6. Joel and Mary bring this case to hold Fox News, Fox reporter Zimmerman, and Fox News contributor and political operative Butowsky accountable. They seek to help prevent similar malicious and reckless conduct to protect future innocent victims from similarly becoming political fodder.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). Plaintiffs Joel and Mary Rich are citizens of the State of Nebraska and: (i) Defendant Fox News Network LLC (“Fox” or “Fox News”) is a Delaware corporation with its principal place of business in New York City, New York. Fox News is a subsidiary of Fox Corporation, a publicly traded Delaware corporation; (ii) Defendant Malia Zimmerman is a citizen of the State of California; and (iii) Defendant Ed Butowsky is a citizen of the State of Texas. The amount in controversy, exclusive of costs and interest, is in excess of \$75,000.

8. 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. Fox News participated in the scheme and directed the activities of Defendant Zimmerman from New York, and published key articles and broadcast substantial, related television content from New York. Fox News also acted with the assistance of Fox's employees and agents, Defendants Zimmerman and Butowsky, in New York. Most, if not all, of Fox News's decisions were also made in New York and communicated from the state.

PARTIES

9. Plaintiffs Joel Rich and Mary Rich are Seth's parents. Joel and Mary are citizens of Nebraska and reside in Omaha, Nebraska.

10. 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. It has its principal place of business at 1211 Avenue of the Americas, New York, New York.

11. Defendant Malia Zimmerman is a citizen of California. Zimmerman is and at all relevant times was an investigative reporter and an employee of Fox News Network, LLC.

12. Defendant Ed Butowsky is a citizen of Texas. Butowsky is a frequent contributor on Fox News and Fox Business News in New York.¹

¹ Butowsky has also 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. See Ed Butowsky's Official Website, Ed Butowsky, <http://www.edbutowsky.com/ed-butowsky/> (last visited Mar. 13, 2018).

FACTS

I. Seth Rich.

13. Seth was one of Joel and Mary's two children.

14. He was a 2011 graduate of Creighton University, where he majored in political science.

15. Seth moved to Washington, D.C. in 2012, and was twenty-seven years old on July 10, 2016, when he was murdered.

16. He was shot at approximately 4:20 a.m. in his Northwest Washington, D.C. neighborhood.

17. The D.C. Metropolitan Police Department ("MPD") has identified no suspects, witnesses, or possible motives. MPD's working theory was and is that the murder was a botched robbery.

II. Russia Hacks the DNC's Emails and WikiLeaks Publishes Them.

18. One month earlier, on June 14, 2016, the *Washington Post* reported that two groups working for the Russian government had accessed the DNC's computer network and were monitoring the DNC's emails and chat communications (the "DNC hack").

19. On July 22, 2016, WikiLeaks published more than 44,000 DNC emails by posting them on a WikiLeaks website.

20. The FBI announced its investigation into the DNC hack shortly thereafter.

21. On October 7, 2016, the Department of Homeland Security released a Statement that the U.S. intelligence community concluded that Russia was responsible for the DNC hack and subsequent distribution via WikiLeaks. The Statement provided, in relevant part, that the United States was "confident that the Russian Government directed the recent compromises of e-mails from US persons and institutions, including from US political organizations" and "[t]he recent disclosures

of alleged hacked e-mails on . . . WikiLeaks . . . are consistent with the methods and motivations of Russian-directed efforts.”²

III. A Salacious and Fictitious Tale Emerges.

22. Notwithstanding the U.S. intelligence community’s conclusion that Russia had obtained the DNC emails via computer hacking, a conspiracy theory emerged among fringe political groups that Seth had leaked the DNC emails.

23. On August 10, 2016, Joel and Mary responded to the fringe conspiracy theory:

The family welcomes any and all information that could lead to the identification of the individuals responsible, and certainly welcomes contributions that could lead to new avenues of investigation. . . . That said, some are attempting to politicize this horrible tragedy, and in their attempts to do so, are actually causing more harm than good and impeding on the ability for law enforcement to properly do their job. For the sake of finding Seth’s killer, and for the sake of giving the family the space they need at this terrible time, they are asking for the public to refrain from pushing unproven and harmful theories about Seth’s murder.

IV. Butowsky and Fox’s Zimmerman Seek Out Joel and Mary to Mainstream the Sham Story.

24. The Defendants saw Joel and Mary’s personal tragedy as an opportunity: They sought to take the conspiracy theory from the fringe to the front pages and screens of the main-stream media.

25. Butowsky sought out Joel and Mary to further the Defendants’ conspiracy. For instance, on December 17, 2016, Butowsky sought to use Joel and Mary’s Jewish heritage and community ties to gain a favorable introduction to them and posted on Facebook that he was “looking to connect with anyone Jewish in Omaha Nebraska.” Through these overtures, Butowsky successfully contacted the Riches.

² See Dep’t of Homeland Sec., Joint Statement from the Dep’t of Homeland Sec. and Office of the Dir. of Nat’l Intelligence on Election Sec. (Oct. 7, 2016), <https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national>.

26. In December 2016, Joel and Mary spoke by phone with Butowsky. Butowsky told Joel and Mary that he had heard second-hand that Julian Assange said WikiLeaks received the DNC emails from Seth. Joel and Mary assured Butowsky there was no way that was true.

27. On January 3, 2017, Butowsky wrote to Joel by email to follow up. His subject line was “Please call ed [sic] Butowsky. We met through Jeremy from your temple. 972-xxx-xxxx.”

28. That very same day, Fox’s Zimmerman, who Fox knew or should have known was an irresponsible journalist (including because of a complaint filed with the Honolulu Community-Media Council against a previous employer based on her recklessly inaccurate journalism) inquired about the circumstances of Seth’s murder by email to Brad Bauman. Bauman was working for Joel and Mary on a volunteer basis to handle the torrent of press inquiries they received. After Bauman responded, copying Joel, Zimmerman wrote back and assured Joel that she “would want to get the information directly from [Joel] or law enforcement to ensure its accuracy.”

29. Butowsky and Fox’s Zimmerman, purportedly acting independent of each other, pursued Joel and Mary to try to gain their trust.

30. On January 5, 2017, Zimmerman wrote to Joel by email requesting information on Seth for stories she was writing—supposedly to “bring further attention to his case.” Joel, without knowing the Defendants’ true intentions, sent Zimmerman information about and photographs of his deceased son for use in her reporting.

31. Soon thereafter, on or about January 20, 2017, Butowsky called Joel and encouraged him to look into Seth’s bank account for payments from WikiLeaks.

32. Throughout their conversations with Butowsky, Joel and Mary assured Butowsky that the rumors about Seth were baseless.

V. Butowsky and Fox's Zimmerman Recruit Rod Wheeler to Assist in Their Scheme.

33. Rod Wheeler is a former MPD homicide detective turned private investigator who was under contract with Fox News as a contributor. Pursuant to his agreement with Fox News, Wheeler was paid for on-air appearances and for "off-air assistance, as requested by Fox." Fox knew or should have known that Wheeler had a history of overstating and/or misrepresenting facts in news stories, including based on previous admissions Wheeler had made about his inaccurate reporting of investigations.

34. On February 23, 2017, according to Wheeler, Butowsky wrote to Wheeler by text:

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?

35. Wheeler has described that he called Butowsky, and that Butowsky stated that he was working with Zimmerman at Fox News on an article regarding Seth, and that he wanted to enlist Wheeler to conduct an investigation into Seth's murder.

36. On information and belief, Butowsky, Fox's Zimmerman, and Fox News sought to engage Wheeler to help advance and further publicize the sham story that Seth was responsible for giving the DNC emails to WikiLeaks.

37. Wheeler confirms that on February 28, 2017, Wheeler met with Butowsky and Fox's Zimmerman at a restaurant on Capitol Hill in Washington D.C.

38. Wheeler also confirms that Butowsky advised Wheeler that Zimmerman was an investigative journalist with Fox News who had been investigating Seth's murder for several months.

39. On information and belief, Butowsky, Fox's Zimmerman, and Fox News sought to have Wheeler plausibly corroborate the sham story based on the fringe conspiracy theory that Seth gave the DNC emails to WikiLeaks.

40. Wheeler proceeded to act for the benefit of Fox News, for whom he was a contributor. Wheeler worked with the knowledge of, with the consent of, and under the control of Fox News.

VI. In Furtherance of the Scheme, Butowsky and Wheeler Induce Joel and Mary to Hire Wheeler.

41. On the very same day that Wheeler met with Butowsky and Fox's Zimmerman at the Capitol Hill restaurant, Butowsky sent an email to Joel Rich offering to hire Wheeler—whom he portrayed as an independent private investigator—on Joel and Mary's behalf.

42. According to Wheeler, Butowsky told Wheeler that, in talking to Joel and Mary, he should “[m]ake sure to play down Fox News, don't mention you know [Zimmerman].”

43. Wheeler agreed. When he spoke with Joel and Mary, pursuant to Butowsky's direction, Wheeler did not discuss Defendants' ulterior motive, the fact that he had met with Fox's Zimmerman, or details regarding the sham story on which Butowsky, Fox's Zimmerman, and Fox News were already working.

44. Following Butowsky's and Zimmerman's directions, Wheeler omitted essential and necessary facts in discussing his prospective engagement with Joel and Mary.

45. On or around March 3, 2017, Butowsky sent Joel a draft engagement agreement. It stated in part that Wheeler would provide “media representation . . . on behalf of the immediate family of Seth Rich” and “[i]nterview, investigate and represent immediate family members of Seth Rich in any and all media contacts and with regards to the official police investigation surrounding the death of Seth Rich.”

46. Joel and Mary rejected this version of Wheeler's engagement agreement and told Butowsky and Wheeler that they would not allow Wheeler to serve as their media representative.

47. Butowsky agreed with Joel's request that, as a condition of hiring Wheeler, Joel and Mary would control any and all comments Wheeler made publicly.

48. That assurance was false. Butowsky did not intend that Joel and Mary would control any and all comments Wheeler made publicly.

49. On March 5, 2017, Butowsky followed up and urged Joel and Mary to allow him to pay Wheeler on their behalf. Butowsky appealed to their need to get closure, as a family.

50. Butowsky falsely assured Joel that his motivation was purely altruistic—*i.e.*, that he was concerned about the stories circulating about Seth. The two men discussed a Jewish summer camp scholarship fund and a fundraising concert to which Joel invited Butowsky because, by then, Butowsky had deliberately and successfully cultivated Joel's trust.

51. By phone that same day, Butowsky further assured Joel that Wheeler would provide all information directly to Joel and Mary, not to Butowsky, and that Wheeler would take direction from Joel and Mary, not from Butowsky. Butowsky also told Joel and Mary that they "[would] never see me ever talk about this anywhere."

52. Those assurances were false.

53. By phone on March 13, 2017, Butowsky acknowledged to Joel that "I know what you've been through."

54. In the same call, Butowsky reiterated that, although he would finance Joel and Mary's retention of Wheeler, Butowsky would respect Wheeler's legal obligation not to speak to him (Butowsky) or anyone other than Joel and Mary about the investigation.

55. That assurance was also false.

56. On March 14, 2017, relying upon Butowsky and Wheeler's representations, Joel and Mary executed the revised contract with Capitol Investigations LLC, Wheeler's private investigation firm.

57. Because Joel and Mary required Wheeler to agree not to discuss the case with the media unless they permitted him to do so, the final agreement omitted any language regarding media representation and included the provisions that "[t]he representation shall not include media representation, unless otherwise permitted by the Client in writing" and:

All information developed and submitted by Capitol Investigations LLC and provided to Client or Client's authorized representative shall be treated as strictly confidential and not released or disclosed to any third party without the prior written authorization of Capitol Investigations. *Capitol Investigations shall not release any information regarding the investigation, including but not limited to findings, working theories or path forward to any third party without prior authorization by Client*; unless that third party is an investigating agency, i.e. Metropolitan Police Department and the FBI (emphasis added).

58. According to Wheeler, Butowsky wired an up-front payment for Wheeler's work. Rather than use his own bank account to send the wire, Butowsky used an account in the name of "GOOGIE, LP."

VII. Butowsky, Fox's Zimmerman, and Wheeler Scheme with Fox News to Publish the Sham Story.

59. Contrary to Wheeler's and Butowsky's assurances and explicit representations, Wheeler worked with Fox News, Zimmerman, and Butowsky to develop the fictitious article for Fox News without telling Joel and Mary he was doing so. Wheeler has confirmed several communications commemorating such work in which he participated with and between Fox News and its producers, Zimmerman, and Butowsky.

60. On or around April 9, 2017, Wheeler sent a text message to Fox's Zimmerman, stating, "I'm ready to say Seths [sic] Death [sic] was not a botched street robbery."

61. On April 18, 2017, according to Wheeler, Butowsky wrote to Wheeler in a text message and asked, “[a]re you in Washington DC area on Thursday afternoon? I am meeting [White House Press Secretary] Sean Spicer and want you with me.”

62. The next day, on April 19, 2017, according to Wheeler, Butowsky wrote to Wheeler in a text message and asked “Do you have summary done yet?[] Just bulleted [sic]. Just want to make sure we get point to Sean [Spicer] easily.”

63. On April 20, 2017, Wheeler and Butowsky met with Sean Spicer at the White House. According to Wheeler, Wheeler and Butowsky provided Spicer with a copy of written materials related to his investigation, and Spicer asked Butowsky and Wheeler to keep him abreast of any developments.

64. Spicer confirmed publicly that he met with Butowsky and Wheeler at the White House, and that they discussed Butowsky, Wheeler, and Fox News’s development of the sham narrative and Fox’s planned coverage of it.

65. Neither Wheeler nor Butowsky asked Mary or Joel for permission to meet with Spicer or told them anything about any such meeting.

66. On April 24, 2017, with Joel and Mary’s approval, Wheeler secured an interview with Detective Della-Camera, the lead MPD homicide detective investigating Seth’s murder.

67. Wheeler confirms that Butowsky knew about that meeting before it happened, because Butowsky sent an email to Wheeler and Fox’s Zimmerman the night before the interview, stating “Della camera is either helping us or we will go after him as being part of the coverup.”

68. Confirming the Defendants’ coordination, Wheeler has described how Fox’s Zimmerman sent him numerous emails with “research” she had conducted on Detective Della-Camera and regarding MPD’s investigation of Seth’s death. Wheeler has confirmed that Butowsky was copied on many of the emails Zimmerman sent to Wheeler.

69. On May 10, 2017, Butowsky and Fox's Zimmerman called Wheeler *from Butowsky's phone* to falsely inform him that *they* had developed an FBI source supposedly confirming that emails were sent between Seth and WikiLeaks. According to Wheeler, Fox's Zimmerman and Butowsky told Wheeler that Zimmerman and Butowsky would be meeting with the source and would provide Wheeler with details.

70. Meanwhile, Zimmerman drafted a sham news article to be published on Fox News, reporting that Seth gave the DNC emails to WikiLeaks (the "Zimmerman/Fox Article").

71. According to Wheeler, Zimmerman and Butowsky were working together and on behalf of Fox News on the Zimmerman/Fox Article and had exchanged multiple drafts.

72. According to Wheeler, on May 11, 2017, Zimmerman sent Wheeler a draft of the Zimmerman/Fox Article.

73. According to Wheeler, on May 14, 2017, Butowsky informed Wheeler that President Donald Trump had read a draft of the Zimmerman/Fox Article and wanted it published "immediately."

VIII. Fox News Publishes the Zimmerman/Fox Article Falsely Stating that Seth Leaked the DNC Emails to WikiLeaks.

74. According to Wheeler, on May 15, 2017, Fox's Zimmerman called Wheeler and told him the "bosses at Fox want her to go" with the Zimmerman/Fox Article the next day and Butowsky left Wheeler a voicemail telling him to "close this deal, whatever you got to do."

75. That same day, Wheeler wrote to the local D.C. Fox reporter Marina Marraco by text stating there was breaking news regarding Seth that would air the next day on Fox News.

76. When Marraco asked to speak with Wheeler about the false story, Wheeler told her he first needed to check with the Fox News producers, on information and belief, in New York.

77. Wheeler did in fact reach out to the Fox News producers, who told Wheeler that they wanted Fox News to break the false story rather than the local Washington, D.C. Fox affiliate.

78. The same day, Fox's Zimmerman reached out to Joel to request Joel and Mary's comment, including on the "fact" that Zimmerman had "been in communication with a federal agent who reviewed an FBI report completed last July that showed Seth had been in communication with [Wikileaks] and that [Seth] had in fact transferred emails from the DNC to Wikileaks."

79. Zimmerman's statements to Joel were lies.

80. Also on May 15, 2017, Wheeler called Joel to discuss the Zimmerman/Fox Article. Joel told Wheeler the news story was fictitious.

81. The same day, Fox's Zimmerman wrote to Wheeler by text asking if he was *with* Butowsky. Zimmerman wrote that Butowsky was "supposed to get more info on Seth rich [sic] today" because "[i]f *he* [Butowsky] does *we* need to figure out what *you* [Wheeler] can say on the record" (emphasis added).

82. The same day, according to Wheeler, Butowsky wrote by email to various Fox News producers and on-air talent in New York—including Steve Doocy, Gavin Hadden, Ainsley Earhardt, and Brian Kilmeade—regarding the Zimmerman/Fox Article, stating, 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 (emphasis added).

83. Marraco published an article late on May 15, 2017, for the local D.C. Fox affiliate, stating in relevant part that "Rod Wheeler, a private investigator hired by the Rich family, suggests there is tangible evidence on Rich's laptop that confirms he was communicating with WikiLeaks prior to his death."

84. Zimmerman, recognizing that Fox News's producers in New York preferred to have the sham story broadcast first nationally on the Fox News network rather than on the local Fox affiliate, wrote via text message to Wheeler that "New York won't be happy."

85. In Zimmerman's text message to Wheeler, Zimmerman confirmed Defendants' agreement to work in concert to develop the sham story: "This could be really bad if the Fox News channel thinks you fed an exclusive *we invested a lot of time and money into* to a local channel just hours before we were going to publish . . ." (emphasis added).

86. The next morning, on May 16, 2017, Wheeler confirmed receiving several text messages from Butowsky stating, in relevant 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 [sic] did this. With Comey recently being fired this will gain a lot of attention and it's true."; and
- "The above and stating that the Russian hacking narrative of stealing the records from the DNC is officially dead."

87. On May 16, 2017, Fox News published the Zimmerman/Fox Article, entitled "Slain DNC Staffer Had Contact with WikiLeaks Say Multiple Sources." Among other lies, the article falsely attributed a quote to an unnamed federal investigator as stating: "I have seen and read the emails between Seth Rich and WikiLeaks."

88. The Zimmerman/Fox Article further stated that "[t]he revelation is consistent with the findings of Rod Wheeler, a former DC homicide detective and Fox News contributor and whose private investigation firm was *hired by Rich's family* to probe the case" (emphasis added).

89. The sham article also purported to quote Wheeler that "[m]y investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks."

90. On May 16, 2017, Fox News published a second sham article authored by Zimmerman which proclaimed “Rod Wheeler, a retired Washington homicide detective and Fox News contributor investigating the case on behalf of the Rich Family, made the WikiLeaks claim, which was corroborated by a federal investigator who spoke to Fox News.” The second article also stated that “a spokesman for Rich’s family on Tuesday said Wheeler was not authorized to speak for the family. . . .”

IX. Fox News’s Coverage of Seth is Immediately Exposed as Fiction.

91. Upon information and belief, in a three-way taped conversation that occurred a few hours after the sham story ran, Butowsky and Fox’s Zimmerman conceded Wheeler had never said that “[m]y investigation up to this point shows there was some degree of email exchange between Seth Rich and WikiLeaks.” Wheeler confirms the same thing.

92. Wheeler has confirmed that Zimmerman also admitted she was instructed by her bosses at Fox News to leave the false quote in the story.

93. On May 17, 2017, Wheeler told *Newsweek* that the Zimmerman/Fox Article was wrong and that his “information” from the unnamed “federal investigator” was mere repetition of what Butowsky and Fox’s Zimmerman had asserted. He wrote: “I’ve never, ever seen Seth Rich’s computer, nor have I talked with the federal investigator.”

94. The same day, the local D.C. Fox News affiliate issued “an important clarification on claims that were made by Rod Wheeler, the private investigator hired by Seth Rich’s family. Specifically, in the past 48 hours, Rod Wheeler has told other media outlets that he did not get his information from FBI sources.”

95. Neither Fox News nor Zimmerman nor anyone else ever made a similar clarification regarding the Zimmerman/Fox Article.

96. On May 17, 2017, NBC News confirmed that the FBI had refuted the foundational claim in the Zimmerman/Fox Article that FBI analysis of Seth's computer showed it contained thousands of emails to and from WikiLeaks.

97. A spokesperson for the FBI stated that the FBI had played no part in the investigation of Seth's unsolved homicide. And it had been publicly reported that an FBI official confirmed that MPD never gave the FBI Seth's laptop to analyze after his murder.

98. On May 18, 2017, Joel wrote to Fox's Zimmerman by email and stated that he and Mary were

asking for Fox News and the Fox 5 affiliate for a retraction of the story. . . . [W]e feel that it is important for Fox News to do the right thing so we can definitively fight back against the untruthful rumors that continue to haunt our family and Seth's memory, which causes us great pain.

99. Fox's Zimmerman told Joel that she had forwarded Joel and Mary's request to her editors at Fox News.

100. Fox's Zimmerman also told Joel that "much of our information came from a private investigator, Rod Wheeler, who we understand was working on behalf of the Rich family."

101. But, according to Wheeler, when Wheeler confronted Zimmerman about that statement to Joel, Zimmerman stated "that's the email that Fox asked me to send [Joel]. They wrote it for me and they told me to send it to him."

102. On May 18, 2017, the MPD wrote to Paul McGonagle, VP/News Director for WTTG, Fox 5 DC, and stated that "[b]ased on a history of irresponsible reporting and more recently an inability to provide accurate journalism that has had adverse effects on a national level, we are no longer willing to work with or provide information to reporter Marina Marraco" and "[a]s stated in prior conversations and reaffirmed with her latest story that has caused national outrage regarding

the Seth Rich homicide, we will not do business with Ms. Marraco. It was evident to us that she exploited the grief of the Rich family.”

X. Fox News Propagates the Sham Story.

103. Despite being completely false, the Zimmerman/Fox story went viral. It was quoted, referenced, and republished widely—just as the Defendants knew and should have known it would.

104. Seth’s murder was also repeatedly discussed and referenced on Fox News and in the context of the Zimmerman/Fox Article, including but not limited to:

- Fox’s Sean Hannity tweeted repeatedly about the Zimmerman/Fox Article, including with a link to the May 15 local Fox affiliate article falsely stating that there was evidence that Seth had provided the DNC emails to WikiLeaks; responding “[g]reat catch” to a tweet by “Wiretapped Patriot” stating “Julian Assange @wikileaks TOLD us his source was SETH RICH from early on”; stating “Julian Assange all but identifies the 27 year old DNC worker as a source and we are to ignore this?”; and in response to a tweet asking “What is stopping the Rich family from suing Hannity into oblivion for defaming their dead son’s name?” replying “Sue for what?? He was Murdered. Watch @JulianAssange interview. Maybe @realDonaldTrump should sue all u snowflakes for lying about him. Lol[.]”
- Fox’s Hannity also repeated the claim that Seth gave WikiLeaks the DNC emails repeatedly from May 16, 2017, through May 23, 2017, on his Fox News program and his radio program.
- On the day the Zimmerman/Fox Article was published, Steve Doocy, co-host of Fox & Friends, stated “[f]or a long time on the internet and elsewhere, he has been rumored to have been the one who gave WikiLeaks the DNC emails. So, if that is true, and we don’t know yet, it looks like Russia didn’t give it to WikiLeaks. It was Seth Rich, perhaps.”
- On the same day Fox News published the Zimmerman/Fox Article, Lou Dobbs, host of Fox Business Network’s Lou Dobbs Tonight stated: “A new bombshell report reveals slain DNC staffer Seth Rich leaked thousands of e-mails to WikiLeaks before he was murdered.”
- The morning the Zimmerman/Fox Article was published, the Local Fox 5 coverage was replayed nationally.
- On May 21, 2017, paid Fox News correspondent Newt Gingrich stated on Fox & Friends that Seth “apparently was assassinated at 4 in the morning, having given WikiLeaks something like 23,000—I’m sorry, 53,000 emails and 17,000

attachments. Nobody is investigating that. And what does that tell you about what was going on? Because it turns out, it wasn't the Russians.”

105. On May 22, 2017, Wheeler stated in a public media release that “I am of the personal opinion that the information/article reported by Fox News Channel was essentially correct and worthy of further investigation.”

XI. Fox News Retracts the Sham Story.

106. On May 23, 2017, after Joel and Mary's lives had been thrown into turmoil, Fox News retracted the Zimmerman/Fox Article.

107. The retraction stated: “The article 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.”

XII. Notwithstanding the Retraction, Fox and Butowsky Continue to Propagate the Sham Story, and Butowsky Continues to Harass Joel and Mary.

108. Despite the retraction, Fox News coverage continued. For example:

- During his radio show on June 22, 2017, Fox's Hannity stated that, although he had no “information about why [Seth] was murdered [] except that it was suspicious,” corruption in the DNC “might explain why Julian Assange . . . talked about Seth Rich.”
- On the Fox News program “Special Report with Bret Baier,” a guest stated on May 29, 2017, “[m]aybe they're wondering whether Seth Rich was assassinated by Hillary Clinton, things like that, that's what they're really wondering.”
- On the Fox Business program “After the Bell,” a guest stated on July 11, 2017, “this shows that the Russians did not do it. That server was turned over by Seth Rich”
- On the Fox Business program “After the Bell,” a guest stated on January 10, 2018, “is the reference to Seth Rich, the Democratic National Committee staffer who was killed assassination-style in D.C., and who it is believed was somehow facilitated the hacking with DNC emails?”
- Fox News left the content up on its website for over two years and only removed it after the Second Circuit Court of Appeals highlighted in a September 13, 2019 opinion that “to this day, Fox News makes available online at least two videos repeating, almost verbatim, the content of the [Zimmerman/Fox Article]”.

109. On information and belief, Fox continued to exploit the sham story because it was good for ratings. For instance, Variety published an article on May 24, 2017, which stated that Sean Hannity saw a massive spike in his ratings for May 23, 2017, attributable to his teasing a major announcement regarding Seth. Variety further reported that Nielsen data showed that Hannity averaged 2.45 million total viewers with 565,000 in the key adults 25-54 demographic at 10 p.m. which, compared to the comparable night from 2016, was an increase of 50% in total viewers and a 68% rise in the demographic. And Fox News was number one in the demographic for the total day, as well as in total viewers in both primetime and total day.

110. Meanwhile, advertisers were outraged by Fox News's conduct and some eventually pulled their advertisements from Hannity's show.

111. Butowsky's outrageous conduct also continued. On May 25, 2017, he wrote to Joel in a text message designated "Private message not to be shared." Butowsky continued to exploit Joel's emotions:

I kept thinking at some point you would explain the things written about me were not true but you never did. . . . The idea that I conspired to do something which I have no idea what that could've been is complete hogwash made up by this jackass Brad Bauman. In the meanwhile, You should call Malia Zimmerman. She found the person and the gun that was used to shoot your son. That is what you wanted, correct? If you want her phone number text me and I will send it to you. ***When you find out who did it you are going to be very very emotional*** (emphasis added).

112. 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?"

113. On August 15, 2017, Butowsky commented live via his Twitter handle "@EdButowsky" that "Seth [sic] parents know it," and, after Matt Couch said "Aaron Rich [Seth's brother] had money from WikiLeaks go into his personal account," Butowsky wrote "[c]orrect" and "[p]arents confirmed."

114. On August 16, 2017, Butowsky told NPR that “every word” of the retracted Zimmerman/Fox Article was true.

115. Earlier this month, the *Washington Times* published an opinion piece that falsely stated, in relevant part, that “[a]ccording to Ed Butowsky, an acquaintance of the family, in his discussions with Joel and Mary Rich, they confirmed that their son transmitted the DNC emails to Wikileaks.” On information and belief, and based on the article itself, Butowsky provided his quote to the article’s author.

116. According to a tweet by an author for the Gateway Pundit, earlier this month Butowsky also falsely told her that “Butowsky tells me that he spoke to Mr Rich about @Wikileaks on December 17, 2016 at 3:17pm — and he confirmed his belief that his son was the leaker.” The Gateway Pundit then published an article quoting Butowsky.

117. Butowsky’s outrageous behavior continues via Twitter, and by calling Joel, leaving him voicemails, and sending him text messages at least until the filing of the Original Complaint in this action.

XIII. Joel and Mary Rich Have Been Severely Harmed by Defendants’ Conduct.

118. The extreme outrageousness of Defendants’ abhorrent conduct, is confirmed by the public outrage with which it was met. For example:

- *The Atlantic* reported that Fox’s “retraction now will have extremely little effect” because “[t]he impression of Seth Rich as an agent of conspiracy, rather than a victim of violence, is out there, among the public . . . for his family and friends to see [and] will be there forming and informing public opinion.”
- CNN reported that “Fox had stirred up an online riot” and when “it removed that inaccurate story, six days after it was published, the riot had grown out of Fox’s control.”
- *GQ* reported that “[t]he damage is done” because “Fox News has perfected the art of poisoning public discourse with shoddy journalism at best and outright lies at worst” and Fox News “is responsible for the beginning, middle, and end of this entire cruelly exploitative debacle.”

119. For their part, Joel and Mary have described how much the scurrilous allegations about their son and his murder were causing them severe emotional harm. To Mary Rich, Seth's mother, "[i]t was like burying [her son] all over again."

120. Joel and Mary stated, on May 23, 2017:

Imagine living in a nightmare that you can never wake up from. Imagine having to face every single day knowing that your son was murdered. Imagine you have no answers—that no one has been brought to justice and there are few clues leading to the killer or killers. Imagine that every single day, with every phone call you hope that it's the police, calling to tell you that there has been a break in the case.

121. Joel and Mary continued: "Imagine that instead, every call that comes in is a reporter asking what you think of a series of lies or conspiracies about the death. That nightmare is what our family goes through every day."

122. Joel and Mary went on:

Still, conservative news outlets and commentators continue, day after painful day, to peddle discredited conspiracy theories that Seth was killed after having provided WikiLeaks with emails from the DNC. Those theories, which some reporters have since retracted, are baseless, and they are unspeakably cruel.

123. And Joel and Mary explained:

Despite these facts, our family's nightmare persists. Seth's death has been turned into a political football. Every day we wake up to new headlines, new lies, new factual errors, new people approaching us to take advantage of us and Seth's legacy. It just won't stop. The amount of pain and anguish this has caused us is unbearable. With every conspiratorial flare-up, we are forced to relive Seth's murder and a small piece of us dies as more of Seth's memory is torn away from us.

124. Joel and Mary have been irreparably harmed because whatever opportunity that existed to investigate and find closure with regard to their son's murder was taken away from them. Defendants' outrageous conduct prevented them from coming to terms with his murder because they were repeatedly forced to relive it.

125. Joel and Mary have been irreparably harmed because of Defendants' actions. Further, as a result of Defendants' actions, Joel and Mary have been deprived of the time and space they need

to mourn the death of their son. Whatever progress they had made in accepting Seth's death and moving forward was completely derailed by Defendants' outrageous behavior.

126. The death of a child, particularly one that occurs under violent circumstances, constitutes an enormous blow to surviving parents, and that is certainly true for Joel and Mary. However, in light of Defendants' actions, Joel and Mary have been faced with additional losses and traumas not typically experienced by bereaved parents.

127. From the time of Seth's death, Joel and Mary have made every reasonable attempt to deal constructively with the loss. For example, they made repeated attempts to facilitate the criminal investigation.

128. Joel and Mary were beginning to show some improvement in coping with their loss. But the Zimmerman/Fox Article, together with the Defendants' dealings with Joel and Mary leading up to it, constituted an overwhelming assault causing Joel and Mary intense distress.

129. At the present time, Joel and Mary are both exhibiting symptoms consistent with a diagnosis of Post-Traumatic Stress Disorder ("PTSD"). PTSD symptoms are known to take an enormous toll on quality of life, which they have, for Joel and Mary. In Mary's case, her pattern of symptoms is indicative of severe PTSD.

130. Joel and Mary also are exhibiting symptoms of obsessive compulsive behavior. For example, they feel compelled to review the news stories, tweets, and internet material falsely stating that Seth was WikiLeaks's source for the DNC emails. Joel and Mary feel that in order to protect and defend their son against attacks on his character, they must read and understand what is being said about him, which has been overwhelming.

131. Mary is also experiencing symptoms consistent with Social Anxiety Disorder. For example, she no longer feels comfortable in public for fear that she will be approached and asked

about her son leaking emails to WikiLeaks. Consequently, Mary rarely participates in social activities that she enjoyed prior to Defendants' actions.

132. Compounding matters further and because of Defendants' actions:

- A. Joel and Mary are experiencing feelings of anxiety. Their anxiety is continuously triggered by additional stories in the media and by their feeling that they never know what is going to come next.
- B. Joel and Mary feel vulnerable and have developed a hypersensitivity to potentially being harassed, threatened, and harmed. Consequently, they have installed three video cameras outside their house to detect unwanted visitors.
- C. Joel and Mary are distraught not only because their son has been killed, but also because his good name and reputation have been irreparably harmed.
- D. On a daily basis, Joel and Mary feel that they are being attacked from all sides, and they have no indications that this will ever come to an end.
- E. Joel and Mary's symptoms are repeatedly triggered by the constant stream of news coverage making false accusations and maligning their son.

133. In addition to the extreme psychological impact, these circumstances and events have had a particularly damaging impact on Mary's physical health. Mary had always been the principal breadwinner in the family, bringing in a good salary despite significant preexisting health problems. She was laid off shortly before Seth died and accepted a couple of temporary jobs before landing a new position at "National Write Your Congressman," an organization that helps people become involved in the legislative process. For Mary, this job reflected the positive values that her son had always espoused. Mary received an offer for this position the same night that the Zimmerman/Fox Article aired. Mary became distraught as a result of the Article and subsequent related coverage and was unable to accept the job. Mary's preexisting neurological condition, which was being managed with regular treatment, became aggravated so much that Mary has been unable to return to work. Mary worked her whole life and wanted to continue working. Her inability to do so has substantially diminished her self-esteem and has placed her family under considerable financial strain.

134. All of these factors have had and continue to have a profound impact devastating Joel and Mary's physical health, their mental well-being, and their quality of life.

FIRST CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
Against Fox News, Zimmerman, and Butowsky

135. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

136. Defendants' conduct was extreme and outrageous. It included, but was not limited, to:

- A. Butowsky and Zimmerman, acting individually as well as in concert with and on behalf of Fox News, sought out Joel and Mary using deception and capitalizing on their extreme and obvious vulnerability in the wake of their son's murder to use them as pawns to develop the sham story that Fox News could, in turn, report.
- B. Butowsky and Zimmerman, acting individually as well as in concert with and on behalf of Fox News, recruited Wheeler—also a Fox News contributor yet dishonestly professed to be an independent private investigator—purportedly for Joel and Mary but actually to develop the sham story that they knew would harm Joel and Mary.
- C. Butowsky and Wheeler induced Joel and Mary, by false and misleading statements and by omissions, to unwittingly participate in the Defendants' scheme by contracting with Wheeler to "help" solve their son's murder, and to implicate themselves as parents who had commissioned Wheeler, inferring that they were involved in establishing the (fictitious) facts of Defendants' scheme and sham story.
- D. Even though he promised and agreed otherwise with Joel and Mary, Wheeler treated Butowsky, Zimmerman, and Fox News as his clients as they pursued the sham story.
- E. Fox published a false news report on its local WTTG Fox 5 affiliate.
- F. Zimmerman and Fox knowingly published the sham Zimmerman/Fox Article on Fox News and intentionally implicated Joel and Mary by inferring that they were involved in establishing the (fictitious) facts contained in the Zimmerman/Fox Article by noting they had contracted with Wheeler.

- G. Wheeler made multiple statements in the media, against Joel and Mary's wishes and in violation of his contractual agreement with Joel and Mary, which implicated Seth as the source of the DNC emails that WikiLeaks published.
- H. Even after retracting the Zimmerman/Fox Article, Fox News continued to publish and publicize the sham story it knew was fictitious and deeply harmful to Joel and Mary.
- I. Butowsky continues to make fictitious statements and to harass Joel and Mary.
- J. The Defendants have never apologized to Joel and Mary.

137. Defendants each intended to cause, or at the very least disregarded the high probability their acts would cause, severe emotional distress to Joel and Mary. Indeed, Joel and Mary specifically informed Defendants Butowsky and Fox's Zimmerman that they were upset about the false statements about their son.

138. Fox directed its employees and agents Zimmerman and Wheeler to pursue the sham story, worked with Butowsky to develop the same, published the Zimmerman/Fox Article, and, according to Wheeler, told Zimmerman to include in the Zimmerman/Fox Article fictitious allegations that Seth provided the DNC emails to WikiLeaks.

139. Butowsky, individually and in concert with Zimmerman (herself acting at Fox's direction and control), recruited Wheeler to engage with Joel and Mary and helped to develop the sham story for the Zimmerman/Fox Article that was reported repeatedly and publicized by Fox News. Butowsky developed the Zimmerman/Fox Article, together with Fox's Zimmerman and Wheeler, and worked with Fox News to publish it. Butowsky also corresponded with Fox News producers and on-air talent to promote the sham story. Butowsky continues to harass Joel and Mary with text messages, emails, and voicemails, and by making public statements that the fictitious allegations of the Zimmerman/Fox Article are true and falsely stating that Joel confirmed that Seth gave the DNC emails to WikiLeaks.

140. Fox's Zimmerman, individually, in concert with Butowsky, and at Fox's direction, recruited Wheeler to engage with Joel and Mary and helped to develop the sham story for the Zimmerman/Fox Article that was reported repeatedly and publicized by Fox News. Fox's Zimmerman wrote the Zimmerman/Fox Article and worked with Butowsky and Fox News to publish it.

141. These actions were so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and are atrocious and utterly intolerable in a civilized community.

142. Fox News is vicariously liable for the conduct of its employees and/or agents Zimmerman and Wheeler because Fox authorized, directed, participated in, consented to, and/or ratified the conduct giving rise to such damages such that it was complicit in that conduct.

143. Zimmerman and Wheeler were acting within the scopes of their employment and/or agency with Fox News when they engaged in the conduct described above that resulted in severe emotional distress to Joel and Mary.

144. Upon information and belief, Fox News controlled the methods and means of the conduct of Zimmerman, Butowsky, and Wheeler. It also took an affirmative, active part in the commission of their acts, from which the injury resulted.

SECOND CAUSE OF ACTION
(Aiding and Abetting Intentional Infliction of Emotional Distress)
Against Fox News, Zimmerman, and Butowsky

145. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

146. Fox News aided and abetted the intentional infliction of emotional distress by Butowsky and Zimmerman by, among other things, providing them with the means, platform, and network through which to develop a sham story using an investigation that Joel and Mary purportedly

commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News.

147. Fox News knew that Butowsky and Zimmerman were engaged in tortious conduct toward Joel and Mary.

148. Fox News was aware of its role in Butowsky's and Zimmerman's tortious activity. It provided substantial assistance to that tortious activity, including, but not limited to: (a) regularly communicating with Butowsky and Zimmerman about the development of a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News; (b) providing resources and direction to Zimmerman to develop a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News; and (c) providing direction to Wheeler as he assisted Butowsky and Zimmerman in developing a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News.

149. Butowsky aided and abetted the intentional infliction of emotional distress by Fox News and Zimmerman by, among other things, recruiting Wheeler, connecting Wheeler with Joel and Mary, encouraging Joel and Mary to enter into the contract with Wheeler by making false assurances, inducing Joel and Mary to implicate themselves as participants in Defendants' development of a sham story that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News, and coordinating with Wheeler, Zimmerman, and Fox News to publish the Zimmerman/Fox Article and to widely publicize the sham story.

150. Butowsky knew that Fox News and Fox's Zimmerman were engaged in tortious conduct toward Joel and Mary.

151. Butowsky knew that, when Fox News published the Zimmerman/Fox Article, it relied upon false and fabricated facts.

152. Butowsky was aware of his role in Fox News's and Zimmerman's tortious activity at the time he provided such assistance, and Butowsky knowingly provided substantial assistance to Fox's Zimmerman and Fox News as they developed a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News.

153. Fox's Zimmerman aided and abetted the intentional infliction of emotional distress by Fox News and Butowsky by, among other things, working with Butowsky and Wheeler to develop a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News.

154. Fox's Zimmerman knew that Butowsky and Fox News were engaged in tortious conduct toward Joel and Mary.

155. Fox's Zimmerman knew that, when Fox News published the Zimmerman/Fox Article, it relied upon false and fabricated facts.

156. Fox's Zimmerman was aware of her role in an overall tortious activity at the time she provided such substantial assistance to Butowsky and Fox News as they developed a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News.

THIRD CAUSE OF ACTION
(Conspiracy to Commit Intentional Infliction of Emotional Distress)
Against Fox News, Zimmerman, and Butowsky

157. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

158. Butowsky, Zimmerman, acting on her own behalf and on behalf of Fox News, and others at Fox News agreed to develop a sham story implicating Joel and Mary that became the basis for the Zimmerman/Fox Article and other media coverage, including by Fox News, and thereby intentionally inflicted, or at the very least disregarded the high probability their acts would cause, severe emotional distress to Joel and Mary.

159. As part of the development of the sham story for the Zimmerman/Fox Article, Butowsky, Zimmerman, acting on her own behalf and also on behalf of Fox News, and others at Fox News agreed to induce Joel and Mary to hire Wheeler, to induce Joel and Mary to unknowingly take part in Defendants' conspiracy to disseminate the fiction that Seth provided the DNC emails to WikiLeaks, and to develop, publish (and republish) the sham story.

160. Fox News, Butowsky, and Fox's Zimmerman formed their first agreement to create the sham story using an investigation that Joel and Mary purportedly commissioned for the Zimmerman/Fox Article, upon information and belief, before recruiting Wheeler to act as an "independent" private investigator for Joel and Mary.

161. Fox News, Butowsky, and Fox's Zimmerman also agreed and acted in furtherance of their conspiracy when they recruited Wheeler and met with him in Washington, D.C. on February 28, 2017, to explain their scheme and goal to Wheeler.

162. Wheeler agreed, upon information and belief, at the February 28, 2017, meeting to assist Fox News, Butowsky, and Fox's Zimmerman in creating the sham story for the Zimmerman/Fox Article as well as Fox News's publishing (and republishing) of that sham story.

163. Butowsky and Wheeler, acting on behalf of Fox News, agreed not to disclose to Joel and Mary their plan or the fact that they were working with Fox's Zimmerman.

164. Butowsky and Wheeler acted in furtherance of the conspiracy when they induced Joel and Mary to engage Wheeler as a private investigator, including when they did not tell Joel and Mary that Wheeler and Butowsky were working with Zimmerman, on behalf of Fox News, to create the sham story.

165. Fox's Zimmerman intentionally participated in the furtherance of the scheme and purpose by writing the Zimmerman/Fox Article and working with Butowsky and Wheeler to develop the sham story using an investigation that Joel and Mary purportedly commissioned for inclusion in the Zimmerman/Fox Article and other media coverage, including by Fox News.

166. Fox's Zimmerman and Butowsky knew that the Zimmerman/Fox Article was fictitious when Fox News published it.

167. Fox News intentionally participated in the furtherance of the plan and purpose by publishing the Zimmerman/Fox Article, directing Zimmerman as she worked with Butowsky and Wheeler to develop the sham story using an investigation that Joel and Mary purportedly commissioned for inclusion in the Zimmerman/Fox Article, and continuing to publish (and republish) the sham story both before and after retracting the Zimmerman/Fox Article.

168. On information and belief, Fox News knew that Zimmerman, Butowsky, and Wheeler were engaging with Joel and Mary under false pretenses, so they could develop the sham story for the Zimmerman/Fox Article.

169. Wheeler intentionally participated in the furtherance of the scheme and purpose by, among other things, inducing Joel and Mary to engage him under false pretenses while omitting the fact that he was working with Butowsky and Fox's Zimmerman on the sham story for the Zimmerman/Fox Article, communicating with Zimmerman and Butowsky regarding his

investigation, appearing multiple times as a paid Fox News commentator and stating that the sham story in the Zimmerman/Fox Article was true, and confirming publicly that “I am of the personal opinion that the information/article reported by FoxNews Channel was essentially correct.”

170. Wheeler knew that the Zimmerman/Fox Article was fictitious when Fox News published it, and Wheeler knew that Butowsky and he were engaging with Joel and Mary under false pretenses, so they could develop the sham story for the Zimmerman/Fox Article and Fox News’s publishing (and republishing) it.

171. The Defendants’ agreements and intentional participation in their plan to develop a sham story using an investigation that Joel and Mary purportedly commissioned that became the basis and for the Zimmerman/Fox Article and other media coverage, including by Fox News, resulted in severe injury to Joel and Mary.

FOURTH CAUSE OF ACTION
(Tortious Interference with Contract)
Against Fox News, Zimmerman, and Butowsky

172. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

173. Fox News, Fox’s Zimmerman, and Butowsky knew of the existence and the terms of the valid contract between Wheeler and Joel and Mary.

174. Fox News, Fox’s Zimmerman, and Butowsky intentionally and improperly procured Wheeler’s breach of that contract, including by seeking confidential information from Wheeler without Joel and Mary’s consent and working with Wheeler to make media appearances to discuss his investigation of Seth’s murder.

175. Zimmerman’s and Butowsky’s acts were improper because they induced Wheeler to violate the terms of his agreement with Joel and Mary, including by inducing Wheeler to make statements to them and in the media without Joel and Mary’s consent, and because Fox’s Zimmerman

and Butowsky used Wheeler's statements as a basis to publish the Zimmerman/Fox Article regardless of whether those statements were true or false.

176. Joel and Mary suffered significant damage as a result of this interference with their contract with Rod Wheeler.

177. Butowsky and Fox's Zimmerman engaged in conduct that was wanton and in reckless and knowing disregard of Joel and Mary's rights.

FIFTH CAUSE OF ACTION
(Vicarious Liability)
Against Fox News

178. Fox News is vicariously liable for its employees' and/or agents' intentional torts against Joel and Mary, committed within the scope of their employment.

179. Zimmerman's tortious acts against Joel and Mary and acts in furtherance of the conspiracy were committed within the scope of her employment by Fox News.

180. Zimmerman's tortious acts against Joel and Mary and acts in furtherance of the conspiracy were committed while Zimmerman was engaged generally in the business of Fox News.

181. Zimmerman's tortious acts against Joel and Mary and acts in furtherance of the conspiracy were necessary or incidental to her employment with Fox News.

182. Zimmerman's tortious acts against Joel and Mary and acts in furtherance of the conspiracy were committed to further Fox News's interests.

183. Zimmerman's tortious acts against Joel and Mary and acts in furtherance of the conspiracy were committed to carry out Zimmerman's duties in furthering Fox News's business.

184. Wheeler's acts, including the following, were within the scope of his employment by Fox News: His conspiring, aiding and abetting, and assisting Fox News, Butowsky, and Fox's Zimmerman in making misrepresentations to Joel and Mary, inducing Joel and Mary to engage

Wheeler as a private investigator, helping create the sham story for the Zimmerman/Fox Article, and his making public statements related to substance of the Zimmerman/Fox Article.

185. Wheeler's acts, including the following, were performed while Wheeler was engaged generally in the business of Fox News: conspiring, aiding and abetting, and assisting Fox News, Butowsky, and Fox's Zimmerman in making misrepresentations to Joel and Mary; inducing Joel and Mary to engage Wheeler as a private investigator, helping create the sham story for the Zimmerman/Fox Article; and making public statements related to substance of the Zimmerman/Fox Article.

186. Wheeler's acts, including the following,, were necessary or incidental to his employment with Fox News: conspiring, aiding and abetting, and assisting Fox News, Butowsky, and Fox's Zimmerman in making misrepresentations to Joel and Mary and inducing Joel and Mary to engage Wheeler as a private investigator; helping create the sham story for the Zimmerman/Fox Article; and his making public statements related to substance of the Zimmerman/Fox Article.

187. Wheeler's acts, including the following, were done to further Fox News's interest: conspiring, aiding and abetting, and assisting Fox News, Butowsky, and Fox's Zimmerman in making misrepresentations to Joel and Mary and inducing Joel and Mary to engage Wheeler as a private investigator; helping create the sham story for the Zimmerman/Fox Article; and his making public statements related to substance of the Zimmerman/Fox Article.

188. Wheeler's acts, including the following,, were done to further Fox News's interest: conspiring, aiding and abetting, and assisting Fox News, Butowsky, and Fox's Zimmerman in making misrepresentations to Joel and Mary and inducing Joel and Mary to engage Wheeler as a private investigator; helping create the sham story for the Zimmerman/Fox Article; and his making public statements related to substance of the Zimmerman/Fox Article.

189. Joel and Mary are entitled to damages as a result of the acts of Zimmerman and Wheeler, and Fox News is vicariously liable for those damages.

SIXTH CAUSE OF ACTION
(Negligent Supervision and/or Retention)
Against Fox News

190. Plaintiffs hereby repeat, reiterate, and re-allege each and every allegation in each of the preceding paragraphs as if fully set forth herein.

191. On information and belief, Zimmerman is an investigative journalist for Fox News and, therefore, Fox News and Zimmerman have an employer-employee relationship.

192. Wheeler was a paid contractor of, and frequent contributor to, Fox News and, therefore, Wheeler is an employee and/or an independent contractor of Fox.

193. On information and belief, on November 30, 1999, the Hawaii Governor's communications director filed a complaint on behalf of Hawaii, against Zimmerman's then-employer, with an organization that mediates disputes about news coverage.

194. On information and belief, the cover letter to the complaint identified Zimmerman and the complaint itself alleged that Zimmerman's employer ignored journalistic ethics, manipulated information, and knowingly reported inaccurate and unsubstantiated stories.

195. On information and belief, Zimmerman was thereafter terminated by her employer in Hawaii.

196. On information and belief, the state of Hawaii withdrew its complaint against Zimmerman's employer because the employer had terminated Zimmerman, but made clear that the state reserved the right to reopen the case were Zimmerman re-hired over the following year.

197. In June 2016, Zimmerman was criticized for her story published by Fox News and citing anonymous officials suggesting that Omar Mateen, the shooter at the Orlando nightclub shooting, had been radicalized by his connection to a local imam, Marcus Dwayne Robertson, and

that Robertson had been “rounded up,” along with several of his associates, in connection to the attack.

198. On information and belief, Zimmerman’s June 2016 Fox News story about the Orlando nightclub shooting was not accurate.

199. Robertson was quoted after Zimmerman’s June 2016 Fox News story was published as stating “On Sunday afternoon, I started seeing all these news reports claiming I’d been rounded up in connection with the shooting of 50 people. I read this and thought it was crazy and started to panic,” Robertson says. “I thought maybe they were coming after me, so I contacted my attorney and other legal representatives who got in touch with the FBI who confirmed that these reports implicating me weren’t true.”

200. Fox News knew or should have known of Zimmerman’s tortious propensities prior to her tortious conduct that inflicted emotional distress on Joel and Mary.

201. On information and belief, in 2007 Wheeler appeared on Fox News and stated that “all over the country” hundreds of gangs of lesbians were carrying pink pistols and “recruiting kids as young as 10 years old,” that such gangs numbered “well over” 150 in the Washington, D.C., area alone, and that “some of the kids have actually reported that they were forced into, you know, performing sex acts.”

202. On information and belief, after the Southern Poverty Law Center’s Intelligence Report refuted Wheeler’s claims, Wheeler issued a “clarification” and apology in which he made clear that he had not meant many of the things he had stated on Fox News, including that there were 150 lesbian gangs in the Washington, D.C., area and that there was a national epidemic of lesbian gangs.

203. On information and belief, Bill O’Reilly, the host of the Fox News program on which Wheeler had made the claims regarding lesbian gangs, stated that the report featuring Wheeler’s

false assertions had been “overstated.”

204. Fox News knew or should have known, including from his own reporting for Fox News, of Wheeler’s tortious propensities prior to his tortious conduct that inflicted emotional distress on Joel and Mary.

205. Zimmerman and Wheeler engaged in tortious conduct against Joel and Mary on Fox News’s premises and/or using property of Fox News.

206. Zimmerman at all times used Fox News’s property and resources when committing tortious acts against Joel and Mary.

207. Zimmerman and Wheeler worked together and in coordination to commit tortious acts that led to Fox News publishing the Zimmerman/Fox Article out of and from Fox News’s property in New York.

208. Fox News is directly liable for its negligent supervision and/or retention of Zimmerman because Fox News knew of her propensity for such conduct.

209. Likewise, Fox News is directly liable for its negligent supervision and/or retention of Wheeler because Fox News knew of his propensity for such conduct.

210. Joel and Mary are entitled to damages as a result of Fox News’s negligent supervision and/or retention of Zimmerman and Wheeler.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in Plaintiffs' favor and against Defendants, containing the following relief:

- a. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiffs for all monetary and/or economic damages;
- b. An award of damages in an amount to be determined at trial, plus pre-judgment interest, to compensate Plaintiffs for all non-monetary and/or compensatory damages, including, but not limited to, compensation for mental anguish and emotional distress, emotional pain and suffering, and any other physical and mental injuries;
- c. An award of punitive damages;
- d. 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
- e. Such other and further relief as the Court may deem just and proper, including injunctive relief.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: January 21, 2020

By: /s/ Eli J. Kay-Oliphant
Eli J. Kay-Oliphant

MASSEY & GAIL LLP
Leonard A. Gail (*pro hac vice*)
Eli J. Kay-Oliphant (EK8030)
Suyash Agrawal (SA2189)
50 East Washington Street, Suite 400
Chicago, IL 60602
Telephone: (312) 283-1590
lgail@masseygail.com
ekay-oliphant@masseygail.com
sagrawal@masseygail.com

SUSMAN GODFREY LLP
Arun Subramanian (AS2096)
Elisha Barron (EB6850)
Beatrice Franklin (BF1066)
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (212) 336-8330
asubramanian@susmangodfrey.com
ebarron@susmangodfrey.com
bfranklin@susmangodfrey.com

Attorneys for Plaintiffs Joel and Mary Rich