

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

SMILEDIRECTCLUB, INC., SDC)
FINANCIAL, LLC, and)
SMILEDIRECTCLUB, LLC,)

Plaintiffs,)

v.)

NBCUNIVERSAL MEDIA, LLC, and)
VICKY NGUYEN,)

Defendants.)

CASE NO. _____

COMPLAINT & JURY DEMAND

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Plaintiffs SmileDirectClub, Inc., SDC Financial, LLC, and SmileDirectClub, LLC (collectively, “SDC”), for their Complaint against Defendants NBCUniversal Media, LLC and Vicky Nguyen (collectively, “NBC”) state and allege as follows:

INTRODUCTION

1. On February 13, 2020, NBC published a broadcast and online report that included over 40 false and misleading statements about SDC. The breadth of its misconduct is staggering. NBC misled its viewers and readers about the safety of the treatment that patients receive when using SDC’s platform, the very real involvement of licensed dentists and orthodontists in the treatment of patients using SDC’s platform, and the effectiveness of the treatment that patients receive when they are treated using SDC’s platform. Incredibly, nearly everything that NBC stated and implied about SDC in its broadcast and online report was factually inaccurate.

2. Making matters worse, NBC knew that it was not telling the truth to its viewers and readers. Prior to NBC publishing its reports, SDC made available to NBC hundreds of pages of documents demonstrating the safety and effectiveness of the treatment patients receive through SDC’s platform. SDC made senior officers available to NBC to answer questions. And SDC offered to arrange interviews with dentists and orthodontists who treat patients using SDC’s platform, as well as interviews with the patients whose lives have been changed for the better as a result of the treatment they received. NBC ignored this information and these sources, though, because it did not intend to publish the truth.

3. SDC brings this lawsuit for a simple reason: NBC must be held accountable for its abuse of power and betrayal of trust. Viewers and readers across the country turn to the media for the information they need to make decisions about their health and well-being. NBC abused their trust by publishing reports about SDC that were littered with false and misleading statements. NBC’s misconduct not only financially injured SDC, but it also prevented patients from seeking

affordable treatment for their orthodontic problems and caused investors to lose millions, if not billions, of dollars. With this action, SDC seeks to repair the damage done by NBC, rebuild its reputation and the reputation of the dentists and orthodontists who use its platform, and correct the record.

SDC Democratizes Access to Orthodontic Treatment

4. Millions of people across the country do not have access to dental care, including treatment for misaligned teeth via clear aligner therapy. They lack access due to geography. There is no brick-and-mortar orthodontist or dentist who provides orthodontics at an office in their town, their county, or even their neighboring county. They lack access due to cost. They cannot afford the thousands of dollars that dentists and orthodontists charge for braces or traditional clear aligner therapy. They lack access due to time. They cannot afford to miss work or school on a repeated basis for multiple in-office appointments during the limited office hours that dentists and orthodontists offer. In other words, everyday commitments, geography, and cost deprive people of the opportunity to correct their misaligned teeth in a traditional setting. More than 85% of the population suffers from some sort of malocclusion (crooked teeth), yet less than 1% are able to access orthodontic care in a traditional setting.

5. Alex Fenkell and Jordan Katzman started SDC to fix that problem. When founded, SDC was a pioneer in the field of teledentistry, which is the use of information technology and telecommunications to allow dentists and orthodontists to treat patients remotely. Over the last six years, SDC has spent hundreds of millions of dollars and hundreds of thousands of hours developing a web-based platform that connects dentists and orthodontists with patients residing anywhere in the state(s) in which they are licensed to practice. Today, SDC is a leader in the teledentistry field. It solved a problem—it developed a way for the remaining 84% of the

population, regardless of where they are located, to have their misaligned teeth corrected by a licensed dentist or orthodontist.

6. SDC's solution is as simple as it was time consuming and expensive to develop. Through SDC's teledentistry platform, dentists and orthodontists ("SDC-affiliated doctors") receive all the information they need to determine whether a patient's misaligned teeth (malocclusion) can be treated using clear aligner therapy through a teledentistry platform. If the SDC-affiliated doctor determines that a patient is a viable candidate, they develop a customized treatment plan for the patient, prescribe a set of clear aligners to slowly and carefully move the patient's teeth, and then monitor the patient's treatment remotely with regular check-ins. For the SDC-affiliated doctor, there is no difference in the clinical process to treat the patient through SDC's platform, as opposed to treating the patient in an office. The SDC-affiliated doctor receives the same information about the patient, follows the same treatment protocols, and is held to the same standard of care.

7. For the patient, there is no difference in the clinical treatment that the patient receives through SDC's platform, as opposed to the treatment that the patient receives in a brick-and-mortar office with clear aligner therapy. The patient has their own personal doctor. The patient must provide the same information, has treatment options evaluated and explained in the same manner, and follows the same treatment protocol when using clear aligners. There are only two differences for the patients, and they are significant. The patient does not need to travel repeatedly to the doctor's office, which solves the geography and everyday commitment problems. And the cost of treatment using SDC's platform is thousands of dollars less than treatment in a brick-and-mortar office—cost problem solved.

8. Doctors and patients across the country quickly embraced SDC's solution. Over 250 doctors, licensed in every state, have hired SDC to provide dental support services and to use SDC's platform. Over one million patients have signed up to be treated by an SDC-affiliated doctor using SDC's platform. And, more important than the number of patients who have signed up, is the number of patients satisfied with their treatment. The satisfaction score for patients treated using SDC's platform far exceeds the score for patients treated in a brick-and-mortar office; and, likewise, the number of patient concerns registered over treatment using SDC's platform is a small fraction of the concerns raised by patients treated in a brick-and-mortar office.

9. The beginning of 2020 saw a significant increase in SDC's business and prospects. More and more doctors were looking to engage SDC so they could treat patients remotely. More and more patients were signing up to receive treatment using SDC's platform. SDC's business and prospects had never been better. SDC had also recently completed its initial public offering, and its stock price was strong, trending upward, and positioned for growth. In fact, as of the close of trading on February 13, 2020, SDC's stock price had soared over **75%** since the beginning of the year. SDC had over 140 institutional shareholders and a market capitalization of over \$5.8 billion.¹

NBC Ignores Facts To Attack and Defame SDC

10. NBC changed SDC's prospects. On February 13, 2020, during its prime-time news broadcast, NBC featured what it called an "investigative" report about SDC, led by Ms. Nguyen. But it was not an investigative report. It was a hit piece. During the course of the broadcast and the online report that preceded it, NBC made dozens of false and misleading statements about

¹ Market capitalization is the aggregate market value of a company represented in dollar amount. It represents the "market" value of a company, and is computed based on the current market price of shares and the total number of outstanding shares.

SDC. Among other false charges, NBC told its millions of viewers and readers that (a) treatment using SDC's platform exposes patients to unique physical and health risks, (b) contrary to SDC's representations, doctors are not involved in the treatment that patients receive when using SDC's platform, (c) the treatment that patients receive using SDC's platform lacks the protocols and procedures people expect in a brick-and-mortar office, and (d) treatment using SDC's platform violates federal and state regulations governing the practice of dentistry.

11. The overall story conveyed by NBC's broadcast and online reports was a false indictment of SDC and all that it had done to solve the problems that prevented millions of people from obtaining the smile they deserved.² The gist of the Reports was clear: treatment using SDC's platform is not safe, treatment using SDC's platform is "do it yourself" dentistry, treatment using SDC's platform is not effective for patients, and SDC is a dishonest company that should be avoided by patients and doctors alike. The Reports were a hit piece, something that Ms. Nguyen later admitted in her social media postings gloating about the damage she had done to SDC.

12. Nearly everything that NBC said about SDC during the Reports was factually inaccurate, defamatory, and misleading, and NBC knew it. In the months prior to the Reports, SDC provided and made available to NBC:

- Hundreds of pages of information about SDC, SDC-affiliated doctors, the treatment that patients receive, and the protocols in place to ensure that patient care is at the highest level;
- Hours of SDC's time in making its executives, including Susan Greenspon Rammelt, SDC's Chief Legal Officer and EVP of Business Affairs, and Dr. Jeffrey Sulitzer, SDC's Chief Clinical Officer, available for interviews;

² NBC initiated its attack on SDC on February 13, 2020 at 4:43 PM EST by publishing an online report titled, "'Things didn't feel right': Some SmileDirectClub customers report problems." Later that day, NBC broadcasted its attack on SDC during NBC Nightly News with Lester Holt at 6:30 PM EST. The broadcast report carried the banner, "Some SmileDirectClub customers report painful problems." The online version of the broadcast report carries the title "SmileDirectClub promises easy teeth straightening. Some Patients Report Problems." Collectively, these reports disseminated by NBC on multiple platforms to maximize viewership/readership are referred to as the "Reports."

- The opportunity to interview SDC-affiliated doctors who had successfully treated patients using SDC's platform;
- The opportunity to interview patients who were pleased with their results from using SDC's platform and clear aligner therapy;
- The opportunity to interview patients who initially had clinical concerns that were addressed by their SDC-affiliated doctor;
- Information on the lack of credibility of the two patients that NBC intended to highlight in its hit piece; and
- Information on anti-SDC trade associations' contributions to the campaigns of elected officials through political action committees and lobbying efforts of government units designed to thwart and suppress SDC's business model.

13. Based on this information, NBC knew before it published the Reports that SDC-affiliated doctors oversee every step of patient care, that SDC-affiliated doctors are held to the same standard of care when treating patients using SDC's platform as in their traditional brick-and-mortar practices (and that over 95% of them have brick-and-mortar practices), and that the satisfaction score for patients who have been treated by SDC-affiliated doctors are among the highest in the industry. NBC knew that its attacks on SDC were factually inaccurate, but that did not stop NBC.

14. The damage done by the Reports cannot be overstated. SDC's stock price, which had been trending upward prior to the Reports, plummeted 15% the day after the Reports were published. Prospective patients cancelled their treatment. SDC's revenue fell. And, SDC's market capitalization dropped by over \$950 million. Much worse, everyone involved with SDC saw their reputations dragged through the mud. SDC's employees and officers across the country, as well as SDC-affiliated doctors, witnessed their hard work being undermined by a news organization and reporter who cared more about ratings and making a splash than the truth.

15. SDC brings this lawsuit for its employees and officers, for its affiliated doctors, for its shareholders, and to recover from NBC the damage it caused to SDC's business and reputation. NBC and Ms. Nguyen betrayed the trust bestowed upon them by viewers and readers across the country. People count on them to provide facts so they can make informed decisions. Instead, they provided lies. In doing so, NBC and Ms. Nguyen caused considerable economic and reputational harm to SDC and misled consumers who trusted NBC to provide accurate information. NBC and Ms. Nguyen must be held accountable.

Overview of Claims against Defendants

16. During the Reports, NBC and Ms. Nguyen published over 40 false and misleading statements about SDC and the treatment patients receive from SDC-affiliated doctors using SDC's platform. Based on those false and misleading statements, SDC asserts thirteen claims against NBC and Ms. Nguyen for defamation:

- a. Count 1: Defamation for falsely stating that treatment using SDC's platform caused health and physical problems;
- b. Count 2: Defamation for falsely stating that treatment using SDC's platform can cause permanent injuries and omitting material facts to falsely imply that using SDC's platform can cause permanent injuries;
- c. Count 3: Defamation for omitting material facts about the thoroughness and extensiveness of treatment received by patients using SDC's platform by SDC-affiliated doctors;
- d. Count 4: Defamation for falsely stating that treatment using SDC's platform injured Female Patient;
- e. Count 5: Defamation for falsely stating that treatment using SDC's platform injured Male Patient;
- f. Count 6: Defamation for falsely stating that patients must be protected from treatment using SDC's platform;
- g. Count 7: Defamation for omitting material facts to falsely imply that treatment using SDC's platform violates state and federal regulations;

- h. Count 8: Defamation for falsely stating that treatment using SDC's platform is "do it yourself" dentistry and omitting material facts to falsely imply that treatment using SDC's platform is "do it yourself" dentistry;
- i. Count 9: Defamation for falsely stating that SDC-affiliated doctors are not involved in treating patients and omitting material facts to falsely imply that SDC-affiliated doctors are not involved in treating patients;
- j. Count 10: Defamation for falsely implying that treatment using SDC's platform is not safe;
- k. Count 11: Defamation for falsely implying that treatment using SDC's platform is "do it yourself" dentistry;
- l. Count 12: Defamation for falsely implying that treatment using SDC's platform is not effective for patients; and
- m. Count 13: Defamation for falsely implying that SDC is a dishonest company.

17. SDC is also bringing a claim (Count 14) against NBC and Ms. Nguyen for violating the Tennessee Consumer Protection Act ("TCPA"). The purpose of the TCPA is to protect consumers and businesses from unfair and deceptive acts. The Reports by NBC and Ms. Nguyen were unfair and deceptive acts by any standard. They willfully and knowingly published dozens of false and misleading statements about SDC, knowing that their actions would cause significant economic and reputational harm to the company.

18. In this lawsuit, SDC seeks to recover over \$950 million for the economic and reputational harm caused by NBC and Ms. Nguyen's actions, as well as punitive damages. SDC also seeks treble damages pursuant to the TCPA. In total, SDC seeks over \$2.85 billion for its common law (defamation) and statutory (TCPA) claims.

PARTIES

19. SmileDirectClub, Inc. is a publicly traded corporation organized under the laws of the State of Delaware, with its principal place of business located at 414 Union Street, 8th Floor, Nashville, Tennessee.

20. SDC Financial, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 414 Union Street, 8th Floor, Nashville, Tennessee.

21. SmileDirectClub, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 414 Union Street, 8th Floor, Nashville, Tennessee. SmileDirectClub, Inc., SDC Financial, LLC, and SmileDirectClub, LLC are collectively referred to as “SDC” in this Complaint.

22. SDC is an oral care company that offers, among other products and services, a med tech platform and dental support organization (“DSO”) services that enable dentists and orthodontists to treat patients with mild to moderate malocclusion with clear aligner therapy using a teledentistry platform. Over the last six years, SDC has grown to be one of the most successful and important participants in the teledentistry industry, with its growth and success predicated on the outstanding patient care provided by the doctors who treat patients using SDC’s platform.

23. Upon information and belief, Defendant NBCUniversal Media, LLC (“NBC”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 30 Rockefeller Plaza, New York, New York. NBC is a media conglomerate that operates in four business segments, including broadcast television. NBC airs a daily evening news program titled “NBC Nightly News with Lester Holt” (“NBC Nightly News”). NBC also publishes online news on its website (www.nbcnews.com). NBC published the defamatory Reports at issue in this case.

24. Upon information and belief, Defendant Vicky Nguyen is a resident of the State of New York. She is an investigative and consumer correspondent for NBC Nightly News and other programs that air on NBC’s family of networks. Ms. Nguyen was the lead reporter for the

defamatory broadcast and online reports at issue in this case. Ms. Nguyen was also the NBC reporter most involved in posting additional defamatory statements on social media and disseminating and promoting the Reports through social media. At all relevant times, Ms. Nguyen was acting as NBC's agent and/or employee, and she acted at all relevant times with NBC's permission or consent and/or at its instruction. Unless otherwise indicated, NBC and Ms. Nguyen are collectively referred to as "NBC" or "Defendants" in this Complaint.

JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this action pursuant to Tenn. Code Ann. § 20-2-214 (2018). Defendants committed acts that resulted in the accrual within Tennessee of multiple tort actions, including defamation. Defendants committed those acts against companies whose principal place of business is located in Tennessee and who experienced the effect of Defendants' torts in Tennessee. Tennessee was the focal point of Defendants' intentional torts, and Defendants knew that Tennessee was the focal point.

26. Venue is proper in Davidson County. Defendants are not residents of Tennessee. Davidson County, Tennessee is the location of SDC's principal place of business. SDC was injured as a result of Defendants' torts and experienced the effect of Defendants' torts in Davidson County.

27. Jurisdiction and venue are also proper in Davidson County because Defendants reasonably anticipated being required to litigate claims related to their Reports in Davidson County and purposefully directed their activities at residents of Tennessee. The following facts, among others, demonstrate this:

28. First, NBC knowingly and intentionally published false and defamatory statements and implications about companies whose principal place of business is in Davidson County. NBC

knew that Davidson County was SDC's principal place of business when it published its false statements and implications.

29. Second, NBC knowingly and intentionally caused reputational and economic harm to companies whose principal place of business is in Davidson County. NBC knew that Davidson County was SDC's principal place of business when it published its false statements and implications. NBC knew that the reputational and economic harm that would result from its Reports would be felt by SDC and its employees and officers in Davidson County. Among other things:

- a. Davidson County is SDC's principal place of business and, therefore, the location where SDC has and will suffer reputational injury and economic loss as a result of the Reports.
- b. Davidson County is the location of SDC's largest workforce. At the time of the Reports, SDC employed over 2,000 individuals who worked or resided in Davidson County. The Reports adversely impacted the work and reputation of the employees closely affiliated with SDC.
- c. Tennessee is the location of SDC's affiliated entity's manufacturing facilities for clear aligners (Antioch, Tennessee). The Reports adversely impacted demand for the clear aligners manufactured in Tennessee, thereby impacting both the company and its Tennessee-based employees in those facilities.
- d. Tennessee is the location of nine SmileShops operated by SDC. The Reports harmed the business and reputation of the SmileShops located in Tennessee, as well as the Tennessee-based employees working in those SmileShops.

30. Third, NBC knowingly and intentionally contacted SDC in Davidson County in connection with the Reports. NBC initiated, received, and responded to, communications (electronic and telephonic) with SDC employees located in Davidson County. And, NBC repeatedly solicited information from SDC employees located in Davidson County over the course of three months prior to the publication of the Reports. At all relevant times, NBC knew that it was interacting with SDC employees located in Davidson County in connection with the Reports.

31. Fourth, NBC knowingly and intentionally traveled to Davidson County in connection with the Reports where it, among other things, interviewed an SDC officer. NBC requested an interview with an SDC officer. NBC voluntarily decided to travel to Davidson County to conduct the interview. And, NBC conducted the interview at SDC's headquarters in Davidson County. Multiple NBC employees, including Ms. Nguyen, were physically present at SDC's headquarters for the interview and its filming.

32. Fifth, NBC published the Reports in Tennessee, including Davidson County. NBC published the Reports during NBC Nightly News, which was viewed by residents of Tennessee, including Davidson County. NBC further disseminated the Reports by encouraging its affiliates, including its Tennessee-based affiliates, to republish the Reports in Tennessee. As a result, NBC intentionally injured SDC's reputation with Tennessee residents, including residents of Davidson County.

33. Sixth, the false statements and implications made in the Reports were republished in Tennessee by multiple Tennessee-based news organizations, which were viewed by residents of Tennessee, including Davidson County residents. NBC knew that the false statements and implications made in its Reports would be republished by other news organizations, both in broadcast and in print. NBC knew or should have known that the false statements and implications made in its Reports would be republished in Tennessee because SDC is a prominent Tennessee-based company.

34. Seventh, NBC receives advertising revenue and other revenue from Tennessee-based companies, including revenue from SDC. In the past 18 months, NBC has received over \$6 million in advertising revenue from Tennessee-based companies, and NBC knows that these

companies are located in Tennessee based on publicly available information, billing statements, and invoices.

FACTUAL ALLEGATIONS

I. SMILEDIRECTCLUB'S EMERGENCE AS THE LEADER IN TELEDENTISTRY

35. SDC was founded with the purpose of connecting doctors with patients who need orthodontic treatment but cannot receive it due to costs, everyday commitments, and geographic isolation. Through trial and error, and the investment of hundreds of millions of dollars and hundreds of thousands of hours, SDC developed a platform and suite of services that allow doctors to treat patients for mild to moderate malocclusion remotely. SDC's platform and suite of services have allowed doctors to treat over one million patients; and, they have allowed SDC to grow into one of the most successful companies in the teledentistry industry.

A. SDC championed teledentistry as a means of helping doctors reach patients who otherwise might not receive treatment.

36. Founded in 2014, SDC was a pioneer in the teledentistry industry. Through its unique web-based platform, SDC connects licensed orthodontists and dentists who undergo a robust vetting process to patients who wish to correct mild to moderate misalignment (or "malocclusion") of their teeth using a remote platform. SDC-affiliated doctors use SDC's teledentistry platform and other non-clinical DSO services to treat patients using clear aligner therapy. Clear aligners are removable trays that are custom fit for a patient. Clear aligners, unlike braces, have no cumbersome brackets or wires.

37. In the past, individuals who had mild to moderate malocclusion—approximately 85% of all people worldwide—either had no access to treatment to improve their smiles or they were limited to the cost-prohibitive brick-and-mortar model. The traditional model, which includes metal braces and clear aligner therapy, suffered from many limitations, including costs of

\$5,000 to \$8,000 or more and the requirement that patients visit a brick-and-mortar dental or orthodontic office for a series of time-consuming visits during limited office hours.

38. Most would-be patients cannot access treatment under the traditional model. In fact, every year, less than 1% of those with malocclusion receive treatment. SDC's founders recognized this void in the market, and based on their belief that everyone deserves a smile they love, they developed a teledentistry platform that improved the way patients can access orthodontic treatment and expanded the number of patients who now have access to that treatment.

39. Using SDC's platform, SDC-affiliated doctors can: (i) treat patients using remote technology; (ii) prescribe patients clear aligner therapy for up to 60% less than the cost of traditional braces and clear aligner therapy; and (iii) help improve patients' smiles in as a little as 4 to 6 months. Critically, every clinical decision and all of the clinical care that patients receive is overseen, directed, and controlled by SDC-affiliated doctors.

40. By using SDC's teledentistry platform for clear aligner therapy, patients save thousands of dollars in comparison to the cost of the traditional model while receiving the same standard of care. Patients are able to obtain these cost savings because SDC's platform removes the overhead costs and excessive profit that are built into the traditional model, which traditional brick-and-mortar practitioners pass on to their patients. Indeed, instead of frequent office visits, SDC-affiliated doctors manage and direct a patient's treatment remotely through SDC's proprietary teledentistry platform, SmileCheck.

B. SDC-affiliated doctors use SDC's platform and system to treat patients for mild to moderate malocclusion.

41. SDC-affiliated doctors use a four-step process to provide clear aligner therapy to patients through SDC's teledentistry platform. In the **first** step, SDC-affiliated doctors use SDC's teledentistry platform and services to establish a connection with their patients. Patients interested

in receiving clear aligner therapy using a teledentistry platform begin their journey through one of three methods: requesting a doctor-prescribed impression kit via SDC's website, visiting their regular dentist if that dentist is affiliated with SDC, or visiting one of SDC's physical SmileShop locations.

42. To have an impression kit delivered to their home, a patient can visit SDC's website and request a kit. The kit is then sent to the patient by a dental laboratory pursuant to a prescription from an SDC-affiliated doctor who is licensed in the patient's state of residence. An impression kit includes dental impression trays, putty, and easy-to-follow instructions that guide the patient through the process of creating clear impressions that an SDC-affiliated doctor can use to prescribe invisible aligners for the patient. The kit also includes a Smile Spreader that a patient can use to take photos of their teeth, which an SDC-affiliated doctor reviews to determine appropriate treatment. Once a patient completes this process, they send their impressions to a dental lab that reviews those impressions to see if they are sufficient (the same as would be the case in a traditional brick-and-mortar setting where physical impressions are sent off to dental labs). If the impressions are sufficient, the dental lab creates a 3D image of the patient's teeth and gums. Patients must also (1) complete forms that request information about their health and fitness for treatment, including forms relating to their medical and dental history, (2) identify their chief complaint, and (3) execute their informed teledentistry consent form. All of that information is then uploaded into the SmileCheck portal for review by an SDC-affiliated doctor who is licensed in that patient's state and has agreed to take on that patient.

43. A patient can also start the process by visiting one of SDC's SmileShop locations to have sophisticated and traditional photos taken of their teeth and gums. At a SmileShop, thousands of photos of the patient's teeth and gums are taken on behalf of an SDC-affiliated doctor,

which are digitally stored and fed into a computer program that generates a 3D image of the patient's teeth and gums. At that time, patients also (1) complete forms related to their dental and health histories, (2) identify their chief complaint, and (3) execute their informed teledentistry consent form. All of that information is then uploaded into the SmileCheck portal for review by an SDC-affiliated doctor who is licensed in that patient's state and has agreed to take on that patient.

44. Alternatively, a patient can start the process by going to their regular dentist, if that dentist is a part of SDC's office-direct model. At their regular dentist's office, traditional photographs are taken of the patient's teeth, along with either the same sophisticated photographs that are taken at the SmileShops or a physical impression, depending on the preferences of the dentist and patient. In addition, the dentist's office (1) collects the same health and dental history information, (2) obtains the patient's chief complaint, and (3) obtains the executed informed teledentistry consent form. All of this information is uploaded by the dentist's office into SmileCheck for subsequent review by an SDC-affiliated doctor; and, if there is a physical impression, it is sent to the dental lab, the same as if the patient had used a doctor-prescribed at-home impression kit.

45. An SDC-affiliated doctor who uses SDC's teledentistry platform and other services is under no obligation to prescribe clear aligner therapy or otherwise treat any patient once the SDC-affiliated doctor is connected with the patient. The SDC-affiliated doctor has the absolute and sole discretion to determine whether treatment is appropriate and, if so, to administer the proper treatment plan. Indeed, and as told to NBC and Ms. Nguyen, these SDC-affiliated doctors refer out hundreds of cases each week for further information, clearances, and/or for in-person traditional orthodontic care.

46. In the **second** step of the process, a draft treatment plan is created by a highly trained dental lab technician for review by the SDC-affiliated doctor. The patient's file, including the 3D digital images created from the photos taken at the SmileShop or dentist office or from the physical impressions that the patient or the patient's regular dentist submits, is sent to highly trained dental lab technicians who work under the direct supervision of over 60 dentists and orthodontists onsite for an extra level of quality assurance. These lab technicians create a draft treatment plan using sophisticated and proprietary treatment set-up software that is standard and well accepted in clear aligner therapy. The draft treatment plan is a proposal that contains a potential course of movement of the teeth to address the patient's chief complaint. Once the draft treatment plan is completed and has undergone a quality assurance check, it is uploaded into SmileCheck along with the patient's oral photos, dental and health history, chief complaint, and informed teledentistry consent form.

47. In the **third** step, the SDC-affiliated doctor evaluates whether a patient is an appropriate candidate for clear aligner therapy using a teledentistry platform. As described above, SDC-affiliated doctors only use SDC's teledentistry platform to treat mild to moderate malocclusion. Thus, if an SDC-affiliated doctor evaluates a patient and determines that the patient needs more complex treatment to address their chief complaint, the affiliated doctor will inform the patient through SDC's platform that they are not a good candidate for clear aligner therapy using a teledentistry platform.

48. If the SDC-affiliated doctor, in their independent professional judgment, determines that additional information or clearances are needed to determine whether a patient is a viable candidate, they will inform the patient of the same through SDC's platform, and will not make a determination until such information or clearance has been obtained. If the SDC-affiliated

doctor has all of the needed information to determine that the patient is an appropriate candidate for clear aligner therapy using a teledentistry platform, and makes such a determination, the SDC-affiliated doctor then reviews the draft treatment plan. The SDC-affiliated doctor has complete discretion to accept the draft treatment plan, modify it, or reject it, based on the SDC-affiliated doctor's independent professional judgment. SDC-affiliated doctors are under no obligation to treat a patient or prescribe clear aligner therapy using SDC's teledentistry platform.

49. Once the treatment plan is finalized, the patient is provided with a detailed explanation of the treatment plan, including 3D digital images depicting anticipated teeth movement. Patients are able to discuss the treatment plan with their SDC-affiliated doctors to make sure that they understand the plan and have confidence that it will address their chief complaint. If the patient elects to move forward with the treatment, the SDC-affiliated doctor submits a prescription for manufacturing of the aligners. SDC then fulfills the prescription on behalf of the SDC-affiliated doctor by arranging for aligners to be manufactured by, and shipped from, a Federal Drug Administration ("FDA")-approved and registered manufacturing facility.

50. Finally, in the **fourth** step, if the patient has decided to move forward with clear aligner therapy, the SDC-affiliated doctor treats the patient. At this stage, the patient first receives the clear aligners prescribed by the treating SDC-affiliated doctor and detailed instructions on their use and care. The patient then uses SmileCheck to ensure that the aligners properly fit their teeth by uploading photos of the aligners on their teeth for review by the SDC-affiliated doctor. After the SDC-affiliated doctor confirms that the aligners properly fit, the patient is instructed to check in with the SDC-affiliated doctor through SmileCheck at least once every 90 days (or more frequently, if requested by either the SDC-affiliated doctor or the patient) so that the SDC-affiliated doctor can monitor the patient's progress and determine whether any midcourse corrections are

necessary. Once the patient has used all of the aligners prescribed by their SDC-affiliated doctor, the SDC-affiliated doctor reviews the patient's progress and determines whether treatment is complete or whether the patient requires any refinements.

51. Throughout this four-step process, the SDC-affiliated doctor maintains sole responsibility for all clinical aspects of the patient's care, including evaluating, diagnosing, and, if appropriate in the SDC-affiliated doctor's independent professional judgment, treating the patient's condition with clear aligner therapy using a teledentistry platform. SDC's involvement in the process is limited to providing administrative, non-clinical DSO services, such as billing and collections, record keeping, arranging for the manufacture and shipment of clear aligners, and the collection of patient information for review by the SDC-affiliated doctor. At no point does SDC treat patients or make any clinical decisions.

C. SDC grew into a multi-billion-dollar company as a result of overwhelming and nearly universal praise by patients.

52. Since SDC was founded in 2014, its teledentistry platform has enabled its affiliated doctors to treat over 1,000,000 patients across all 50 U.S. states, Puerto Rico, Canada, Australia, Ireland, New Zealand, Hong Kong, Germany, and the United Kingdom. Based on high demand from affiliated doctors, SDC has opened over 400 SmileShops, and it has partnered with two of the largest and most trusted pharmacies in the U.S., CVS and Walgreens, to open SmileShops in many of their stores. In addition, the treatment provided by SDC-affiliated doctors is widely accepted by insurance companies as an acceptable method of treatment and is an "in-network" treatment offered by some of the most trusted insurance companies in the U.S., including UnitedHealthcare, Anthem, and Aetna.

53. SDC has grown quickly and substantially since it was founded in 2014 as a result of patients being overwhelmingly satisfied with the clear aligner therapy they receive from SDC-

affiliated doctors through SDC's teledentistry platform. SDC's total revenues increased from \$20.6 million in 2016 to \$750.4 million in 2019. Moreover, a total of 453,053 unique clear aligners were shipped to patients receiving clear aligner therapy from an SDC-affiliated doctor in 2019, as compared to 258,278 in 2018.

54. Based on its incredible success, in September 2019, SDC raised over \$1.3 billion of capital in an initial public offering. As of market close on February 13, 2020, before NBC published the Reports at issue, SDC's stock traded at \$15.33 per share and its market capitalization totaled \$5.86 billion.

55. There are several reasons why patients have been drawn to SDC's teledentistry platform. First, surveys of patients who have received clear aligner therapy from SDC-affiliated doctors through SDC's platform show that an estimated 92% of patients did so because it costs less than the other options available. Patients save thousands of dollars by using SDC's platform instead of a traditional brick-and-mortar treatment model.

56. Second, those same surveys show that patients value the convenience of receiving treatment from an SDC-affiliated doctor through SDC's platform rather than having to deal with multiple in-office visits. More than 60% of counties in the U.S. do not have an orthodontist, but residents in all of those counties are able to receive clear aligner therapy from an SDC-affiliated doctor through SDC's platform.

57. Third, as relevant studies confirm, the effectiveness and safety of the treatment that patients receive from SDC-affiliated doctors who use SDC's platform is as good, if not better, than the effectiveness and safety of the treatment patients receive when they are treated at a brick-and-mortar office. SDC-affiliated doctors must satisfy the same standard of care when they treat patients through SDC's platform as when they treat patients in a brick-and-mortar office. Indeed,

over 95% of the SDC-affiliated doctors who use SDC's teledentistry platform also maintain traditional practices.

58. The fact that patients refer friends and family to seek clear aligner therapy through SDC's teledentistry platform also speaks volumes about the effectiveness and safety of care provided by SDC-affiliated doctors. More than 95% of patients surveyed by SDC stated that they would recommend SDC's SmileShop experience to friends, and over 20% of patients who use SDC's teledentistry platform for the first time come from referrals. Moreover, SDC's Net Promotor Score, which measures patient satisfaction and loyalty by comparing the percentages of satisfied patients and unsatisfied patients, has been an average of 53 since SDC's inception, as compared to an average of 1 for the entire dental industry.

59. Finally, patients who received treatment via SDC's platform are overwhelmingly satisfied with their experience. At the time of the Reports, SDC had an "A+" rating from the Better Business Bureau ("BBB") and it continues to have an "A+" rating. That grade reflects the BBB's degree of confidence that SDC is operating in a trustworthy manner and will make a good faith effort to resolve any concerns filed with the BBB.

D. Brick-and-mortar dentistry uses money and disinformation to attack SDC.

60. Based on SDC's success, it is not surprising that the individuals and organizations who are concerned that they and/or their members will lose patients and/or have to start charging lower prices so as to compete with SDC's platform began a smear campaign in which they attempted to obstruct SDC's efforts to facilitate inexpensive and accessible clear aligner therapy using a teledentistry platform for patients who want to improve their smile.

61. Trade associations that protect the interests of brick-and-mortar dentists and orthodontists have gone to great lengths to undermine SDC's business. For example, the American Association of Orthodontists ("AAO") has lobbied state dental boards to waste hours of their time

and hundreds of thousands of dollars of taxpayer money to investigate baseless complaints it filed against SDC in over 36 states—none of which resulted in a single state taking any final action against SDC. It also lobbied state dental boards, associations, and legislators, to adopt anticompetitive rules and laws that would require patients seeking clear aligner therapy using a teledentistry platform to treat mild to moderate malocclusion to visit brick-and-mortar dentists and get needless x-rays, even though there is no clinical support for these requirements (in fact, clinical studies show the opposite) and they needlessly expose patients to harmful x-rays, germs, and viruses.

62. Similarly, the American Dental Association (“ADA”) and the California Dental Association (“CDA”) have attempted to obstruct SDC’s business through political clout. They contribute millions of dollars to the campaigns of elected officials through political action committees and have made substantial contributions to elected officials who have and continue to try to undermine SDC’s business model. On information and belief, these elected officials are not acting to protect patients, but rather to protect the associations that contribute money to their campaigns.

63. Despite the efforts by these trade associations and organizations to hinder SDC’s progress, SDC has continued to grow across the world as a result of the quality of care provided by the SDC-affiliated doctors who use SDC’s platform and unrivaled patient satisfaction results. Brick-and-mortar dentists, orthodontists, and their associations have not been able to stop SDC’s growth and success. But that was before NBC joined their efforts and initiated its own disinformation campaign against SDC.

II. NBC’S MULTIPRONGED ATTACK ON SMILEDIRECTCLUB

64. NBC initiated its attack on SDC on February 13, 2020 at 4:43 PM EST by publishing an online report. NBC titled the online report: “‘Things didn’t feel right’: Some

SmileDirectClub customers report problems.” NBC posted the report in the “health” section of its online platform, as opposed to the “opinion” section. NBC posted the report in the “health” section to convey to readers that the report was focused on safety and effectiveness issues associated with treatment using SDC’s platform. NBC wanted to convey to readers that the report was a factual investigation as opposed to an opinion piece.

65. NBC also created the following hyperlink for the online report: “www.nbcnews.com/health/health-news/things-didn't-feel-right-some-smiledirectclub-customers-report-problems-n1134056.” NBC used this hyperlink description to convey to readers that the report was focused on health issues associated with treatment using SDC’s platform. The online report also included a hyperlink to the broadcast report to ensure that readers of the online report would also view the broadcast. A copy of the online report is included as Exhibit 1 (hereinafter, “NBC Online Report”).

66. As discussed below, NBC’s online report was defamatory and disparaging because it: (a) falsely stated that treatment using SDC’s platform caused health and physical problems; (b) falsely stated that treatment using SDC’s platform can cause permanent injuries and omitted material facts to falsely imply that treatment using SDC’s platform can cause permanent injuries; (c) omitted material facts about the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC’s platform; (d) falsely stated that treatment using SDC’s platform injured Female Patient;³ (e) falsely stated that treatment using SDC’s platform injured Male Patient; (f) falsely stated that patients must be protected from treatment using SDC’s platform; (g) omitted material facts to falsely imply that treatment using SDC’s platform violates government regulations; (h) falsely stated that treatment using SDC’s platform is “do it yourself”

³ In the Reports, NBC interviewed two former SDC patients—a female and a male patient. In the interest of protecting these patients’ privacy, they will be referred to as “Female Patient” and “Male Patient” in the Complaint.

dentistry and omitted material facts to falsely imply that treatment using SDC's platform is "do it yourself" dentistry; (i) falsely stated that SDC-affiliated doctors are not involved in treating patients and omitted material facts to falsely imply that SDC-affiliated doctors are not involved in treating patients; (j) falsely implied that treatment using SDC's platform is not safe; (k) falsely implied that treatment using SDC's platform is "do it yourself" dentistry; (l) falsely implied that treatment using SDC's platform is not effective for patients; and (m) falsely implied that SDC is a dishonest company.

67. NBC continued its attack later that day. At 5:01 PM EST, Ms. Nguyen published the following statement on her Twitter account: "'Things didn't feel right': SmileDirectClub's dental aligners cause problems. Tune in tonight for our investigation on @NBCNightlyNews." Ms. Nguyen included a hyperlink to the NBC Online Report with the subtitle: "The at-home kits offer to straighten teeth for a fraction of the cost of braces. But is it worth it?" Ms. Nguyen then added "#smiledirectclub" and "#smiledirect" to ensure that consumers, prospective patients, investors, and others interested in SDC would read her post. (Ex. 2 at 1.)

68. Ms. Nguyen continued to promote NBC's attack with a second publication on her Twitter account. At 5:33 PM EST, she posted the following: "And more tonight on @NBCNightlyNews at 630PM EST." Ms. Nguyen's post was in reference to the NBC report attacking SDC. Ms. Nguyen then added "#smiledirectclub" and "#smiledirect" to ensure that consumers, prospective patients, investors, and others interested in SDC would read her post. She also added "#nbcinvestigates" to convey to viewers and readers that the report was a factual investigation into SDC, as opposed to an opinion piece. (Ex. 2 at 1.)

69. Sara Miller, a health editor for the NBC News Health & Medical Unit, further promoted NBC's attack on SDC by reposting Ms. Nguyen's second publication to her Twitter

account. Ms. Miller posted the following statement: “Check out @VickyNguyenTV and @LaurNBC’s investigation of SmileDirectClub.” Ms. Miller’s position as a health editor for NBC conveyed to viewers and readers that the NBC report addressed health issues related to treatment using SDC’s platform. Her reference to an “investigation of SmileDirectClub” conveyed to viewers and readers that the report was a factual investigation into SDC, as opposed to an opinion piece. (Ex. 2 at 1.)

70. NBC broadcasted its attack on SDC during NBC Nightly News with Lester Holt at 6:30 PM EST. Lester Holt introduced the report as follows:

Now to our NBC news investigation and a look at a new trend in teeth straightening for much less than the cost of traditional braces. But some patients complain these at-home treatments do not leave them smiling. Here’s investigative and consumer correspondent, Vicky Nguyen.

A transcript of the broadcast is included as Exhibit 3 (hereinafter, “NBC Broadcast Tr.”) and a video of the broadcast is included as Exhibit 4 (hereinafter, “NBC Broadcast Video”).

71. Mr. Holt’s reference to an “NBC news investigation” and identification of Ms. Nguyen as an “investigative and consumer correspondent” conveyed to viewers that the report was a factual investigation into SDC, as opposed to an opinion piece. Mr. Holt’s introduction was also factually inaccurate. Among other things, the “trend” of doctors treating mild to moderate malocclusion using SDC’s teledentistry platform was not “new.” Doctors had been using SDC’s teledentistry platform for years and had treated over one million patients. Additionally, the treatment provided by doctors using SDC’s platform was not “at-home treatment.” The treatment that patients receive through SDC’s platform is directed and overseen by doctors every step of the way.

72. Following Mr. Holt’s introduction, NBC broadcasted its report attacking SDC. In the broadcast, Ms. Nguyen purported to describe the process that SDC patients follow to receive

treatment through SDC's platform. She profiled one former SDC patient and asserted that the patient experienced pain that was "possibly caused" by the treatment that the patient received from an SDC-affiliated doctor through SDC's platform. (Ex. 3, NBC Broadcast Tr. at 3:9–14.) Ms. Nguyen showed excerpts from an interview she conducted of the Chair of Orthodontics at the University of Alabama in Birmingham. Based on his statements, Ms. Nguyen reported that receiving treatment from a SDC-affiliated doctor on SDC's platform "can lead to permanent harm." (Ex. 3, NBC Broadcast Tr. at 4:3–5.) Finally, in the broadcast, Ms. Nguyen showed excerpts of her interview of SDC's Chief Legal Officer and EVP of Business Affairs, Susan Greenspon Rammelt. In that segment, Ms. Nguyen juxtaposed excerpts of herself asking Ms. Rammelt loaded questions about various topics, such as alleged complaints by individuals who purportedly received treatment through SDC's platform, with "hidden camera" videos of herself and others visiting SmileShop locations.

73. As discussed below, NBC's broadcast report was defamatory and disparaging because it: (a) falsely stated that treatment using SDC's platform caused health and physical problems; (b) falsely stated that treatment using SDC's platform can cause permanent injuries and omitted material facts to falsely imply that treatment using SDC's platform can cause permanent injuries; (c) omitted material facts about the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform; (d) falsely stated that treatment using SDC's platform injured Female Patient; (e) falsely stated that patients must be protected from treatment using SDC's platform; (f) omitted material facts to falsely imply that treatment using SDC's platform violates government regulations; (g) falsely stated that treatment using SDC's platform is "do it yourself" dentistry and omitted material facts to falsely imply that treatment using SDC's platform is "do it yourself" dentistry; (h) falsely stated that SDC-affiliated

doctors are not involved in treating patients and omitted material facts to falsely imply that SDC-affiliated doctors are not involved in treating patients; (i) falsely implied that treatment using SDC's platform is not safe; (j) falsely implied that treatment using SDC's platform is "do it yourself" dentistry; (k) falsely implied that treatment using SDC's platform is not effective for patients; and (l) falsely implied that SDC is a dishonest company.

74. After NBC Nightly News ended, at 7:27 PM EST, Ms. Nguyen published a link to the online report to her Twitter account. Ms. Nguyen's posting stated: "See our full report online now at nbcnews.com." She then added "#SmileDirectClub" to ensure that consumers, prospective patients, investors, and others interested in SDC would read her post. Ms. Nguyen's post included the following synopsis of the report:

SmileDirectClub, the largest at-home dental alignment company, promises to leave patients smiling. But an @NBCNews investigation found that some consumers have reported painful problems, which the company says are caused by misuse.

Ms. Nguyen's reference to an "NBCNews investigation" conveyed to readers that the report was a factual investigation into SDC, as opposed to an opinion piece. (Ex. 2 at 2.)

75. Ms. Nguyen continued to disseminate the online report the following morning. On February 14, 2020 at 9:42 AM EST, she again published a link to the online report. Ms. Nguyen's post stated:

#SmileDirectClub says it has helped more than 750k people have access to more affordable teeth straightening. But now some former customers are warning people about the quick fix.

Ms. Nguyen included the hashtag "#SmileDirectClub" to ensure that consumers, prospective patients, investors, and others interested in SDC would read her post. With this publication, Ms. Nguyen also added the following hashtags: "#dentists," "#aligners," and "#orthodontics." Ms. Nguyen added those hashtags to ensure that consumers and prospective patients interested in

treatment for mild to moderate malocclusion, *i.e.*, patients and consumers who would otherwise seek treatment using SDC’s platform, would read her post. (Ex. 2 at 3.)

76. While Ms. Nguyen was actively promoting the Reports on social media, NBC took steps to ensure nationwide saturation of its attack on SDC. NBC broadcasts its Nightly News program across the country, with an estimated viewership of approximately 5.78 million households. NBC’s publication of its report attacking SDC on Nightly News, its top rated news program, ensured that it would receive the broadest possible audience.

77. NBC also encouraged its affiliates to publish and republish the broadcasted report. On information and belief, NBC distributed packages to its affiliates encouraging them to re-broadcast certain reports featured on Nightly News. After they received those packages, several NBC affiliates rebroadcasted the SDC report during the morning of February 14, 2020, with commentary by their own anchors. Those NBC affiliates included: KING 5 Early Morning News, KGW News at Sunrise, 41 Action News Today, TMJ4 News Today, KARE 11 News Sunrise, News 4 Today, 12 News Today, NewsChannel 8 Today, WXII 12 News, KFOR News 4, WSAV News 3: Coastal Sunrise, NewsChannel 8, TMJ4 News at Noon, and CNBC Worldwide Exchange.

78. The commentary made by the NBC-affiliated anchors was based on their viewing of the broadcast report as well as the information they received from NBC prior to their broadcast. By way of example, the NBC-affiliated anchors published the following statements regarding SDC before and after they broadcasted the report for their audience:

- a. Anchor: “. . . look at a new trend in teeth straightening for much less than the cost of traditional braces, but some patients complain these at-home treatments don’t leave them smiling.” *KSN Hometown News - Living Well* (NBC television broadcast Feb. 14, 2020); *11 Alive Weekend Mornings* (NBC television broadcast Feb. 15, 2020).
- b. Anchor: “I don’t know what to think about that one, sounds a little risky to me.” *KSN Hometown News - Living Well* (NBC television broadcast Feb. 14, 2020).

- c. Anchor: “Well now some patients are complaining that SmileDirectClub doesn’t live up to expectations and even leaves them in pain.” *KING 5 Early Morning News* (NBC television broadcast Feb. 14, 2020).
- d. Anchor: “Many complained about customer service but also about just damage to their teeth. The process all done remotely. You don’t see an orthodontist in person. One orthodontist says not getting an in-person checkup can lead to permanent damage. . . . Nine Congressman also asked the FDA and FTC to investigate that company.” *41 Action News Today* (NBC television broadcast Feb. 14, 2020).
- e. Anchor: “An NBC News investigation found a growing number of customers say the at-home tooth straightening treatments didn’t leave them smiling.” . . . Anchor 2: “So now, nine members of Congress have asked the Food and Drug Administration to investigate SmileDirectClub, ‘to ensure it is not misleading consumers or causing patient harm.’” *TMJ4 News Today* (NBC television broadcast Feb. 14, 2020).
- f. Anchor: “SmileDirectClub is leaving many customers frowning. Customers are saying the aligners prescribed by the online dental company are doing more harm than good. More than 1,800 complaints have been filed with the Better Business Bureau about the company. Doctors say that moving teeth without in-person supervision can lead to permanent harm.” *KARE 11 News at Sunrise* (NBC television broadcast Feb. 14, 2020).
- g. Anchor: “But some patients say the process left them in permanent pain and now Congress is getting involved. Programs like SmileDirectClub rely on dental aligners created with molds and pictures taken by you of your teeth. . . . Now, several congressmen are asking for an investigation into SmileDirectClub. Lawmakers want to make sure the FDA isn’t misleading patients and causing harm.” *News 4 Today* (NBC television broadcast Feb. 14, 2020).
- h. Anchor: “A new trend in teeth straightening not leaving some patients smiling here. You’ve probably seen the ads for SmileDirectClub. It promises to straighten teeth on average in six months or less and that the cost would be less than traditional braces. But now there’s a growing list of people who claim the treatment is causing them some painful problems. . . . Nine congressmen have asked the FDA and FTC to investigate SmileDirectClub to ensure that it is not misleading consumers or causing patient harm.” *12 News Today* (NBC television broadcast Feb. 14, 2020).
- i. Anchor: “8 is on your side this morning with an investigation into a company promising to straighten your teeth in just six months. An NBC News investigation is putting a spotlight on SmileDirectClub. It offers a cheaper, at-home alternative for braces by sending a kit in the mail. But

dozens of complaints are rolling in to the Better Business Bureau about those kits. One woman complained of jaw pain and migraines. . . . Now lawmakers are calling on the FDA to investigate the company.” *NewsChannel 8 Today* (NBC television broadcast Feb. 14, 2020).

- j. Anchor: “Well a company promising to straighten teeth for less than the cost of traditional braces is facing hundreds of complaints.” Anchor 2: “Yeah the company is SmileDirectClub. They send you a kit in the mail, and you do your own treatments, but it may not be that easy. NBC News found a growing list of people who claim the SmileDirectClub treatments are causing them painful problems. . . . And now lawmakers are weighing in. California has become the first state requiring that a dentist has to review an x-ray rather, before a patient can start the treatment.” *WXII 12 News* (NBC television broadcast Feb. 14, 2020).
- k. Anchor: “But some patients complain these at-home treatments don’t leave them smiling. NBC’s investigative and consumer correspondent Vicky Nguyen reports. . . . SmileDirect says orthodontists are critical mostly because they’re worried about losing business. But lawmakers are weighing in, California has becoming the first state requiring that a dentist review an x-ray before a patient can start. The law also prohibits agreements that keep unhappy customers from filing a complaint.” *KFOR News 4* (NBC television broadcast Feb. 14, 2020).
- l. Anchor: “Making headlines this morning, a new trend in teeth straightening for much less than the cost of traditional braces is getting a little backlash. Some patients complain these at-home treatments do everything except leave them smiling. NBC’s investigative and consumer correspondent Vicky Nguyen reports.” *WSAV News 3: Coastal Sunrise* (NBC television broadcast Feb. 14, 2020).

79. NBC’s multipronged attack on SDC maximized the dissemination of its defamatory and disparaging reports regarding SDC. NBC used its highest rated prime-time news program (Nightly News), its online website, its own social media platforms—as well as the social media platforms of individual reporters and producers—and its network of affiliated stations. As discussed below, NBC’s multipronged attack ensured that consumers, prospective patients, investors, and others across the country read and/or viewed its reports. It is not surprising that, given this saturation, the Reports caused investors to panic about SDC’s business prospects, leading to a substantial decline in SDC’s stock price and business value.

III. NBC PRESENTED ITS REPORTS AS PROVIDING FACTS ABOUT SMILEDIRECTCLUB AS OPPOSED TO OPINIONS

80. NBC presented the Reports in a manner that would cause viewers and readers to believe that NBC was providing facts about SDC, as opposed to biased opinions. NBC created this impression by marketing NBC Nightly News to viewers and readers as a program that provided factual information, as opposed to biased opinions. It told viewers and readers that NBC Nightly News is “the most-watched evening newscast in America, providing the very latest on the day’s top stories and going beyond the headlines to add context and analysis to the most pressing issues of our times.” NBC further stated that Nightly News “offer(s) in-depth reporting on health and medicine.” Based on NBC’s marketing of Nightly News, viewers and readers understood the Reports to provide factual information about SDC and the treatment that patients receive using SDC’s platform, as opposed to opinions.

81. NBC reinforced the message that NBC Nightly News provided factual information by marketing its anchor, Mr. Holt, and Ms. Nguyen, its reporter, as individuals who provide factual information, as opposed to biased opinions. NBC markets Mr. Holt as the anchor of numerous investigative reports, “a preeminent broadcast journalist,” and the “most-trusted television news personality in America.” Likewise, it markets Ms. Nguyen as an investigative and consumer correspondent whose reporting has led to multiple state and federal investigations and changes in national policies. Based on NBC’s marketing of Mr. Holt and Ms. Nguyen, viewers and readers understood that the Reports provided factual information about SDC and the treatment that patients receive using SDC’s platform, as opposed to opinions.

82. NBC further reinforced the message that the Reports provided factual information, as opposed to biased opinions, by describing the Reports as the result of an “investigation.” NBC

described the Reports as conveying the factual findings of an investigation before, during, and after the Reports were broadcast. For example:

- a. On February 13, Nguyen tweeted a link to the report, writing “‘Things didn’t feel right’: SmileDirectClub’s dental aligners cause problems. Turn in tonight for **our investigation** on @NBCNightlyNews.” (Ex. 2 at 1 (emphasis added).)
- b. On February 13, Nguyen again tweeted about the upcoming Broadcast, using the hashtag “#nbcinvestigates.” (Ex. 2 at 1 (emphasis added).)
- c. In a February 14 tweet, Nguyen referred to NBC’s “**undercover investigation**” of SmileDirectClub SmileShops. (Ex. 2 at 3 (emphasis added).)
- d. On February 14, Nguyen re-tweeted a tweet by Sally Shin that stated “Smile Direct Club shares plunge after @NBCNews **investigations** by @VickyNguyenTV and @LaurNBC.” (Ex. 2 at 7 (emphasis added).)
- e. On February 13, NBC Nightly News, including a link to the Online report, tweeted “SmileDirectClub, the largest at-home dental alignment company, promises to leave patients smiling. But **an @NBCNews investigation** found that some customers have reported painful problems, which the company says are caused by misuse.” (Ex. 2 at 2 (emphasis added).)
- f. The online report stated, “While SmileDirectClub, the largest at-home dental alignment company, and others promise to leave patients smiling, **an NBC News investigation** into a growing list of complaints found that this new trend in straightening teeth is leading to painful problems for some people.” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- g. Lester Holt introduced the Broadcast as follows: “Now to **our NBC news investigation** and a look at new trend in teeth straightening for much less than the cost of traditional braces. But some patients complain these at-home treatments do not leave them smiling. Here’s **investigative and consumer correspondent**, Vicky Nguyen.” (Ex. 3, NBC Broadcast Tr. at 2:1-6 (emphases added).)
- h. Sara Miller, Health Editor for NBC News’ Health and Medical Unit, re-tweeted a tweet promoting the Online Report by Nguyen, adding “Check out @VickyNguyenTV and @LaurNBC’s **investigation** of SmileDirectClub.” (Ex. 2 at 1 (emphasis added).)

Based on NBC's description of the Reports as investigations, viewers and readers understood that the Reports provided factual information about SDC and the treatment that patients receive using SDC's platform, as opposed to opinions.

83. Finally, NBC conveyed to viewers and readers that the Reports provided factual information, as opposed to biased opinions, by presenting its sources as individuals with credible, firsthand knowledge regarding SDC and the treatment patients receive using SDC's platform. NBC concealed from viewers and readers that their sources were biased, had limited (if any) interaction with SDC, and were not knowledgeable about the treatment of mild to moderate malocclusion using SDC's platform. NBC purposefully inflated their sources' credibility by concealing this information so that viewers and readers would believe that the sources' statements were based on verified facts. Based on NBC's presentation of its sources, viewers and readers understood that the Reports provided factual information about SDC and the treatment that patients receive using SDC's platform, as opposed to opinions.

84. NBC did not present or position the Reports as providing opinions. NBC did not describe the Reports, or any statement made in the Reports, as opinion. NBC did not post the Reports in the opinion section of its website. NBC did not characterize the Reports as opinion pieces in any of its marketing efforts before or after the Reports were published. Instead, NBC took steps to ensure that viewers and readers understood the Reports to provide factual information about SDC and the treatment that patients receive using SDC's platform.

IV. NBC'S REPORTS INCLUDED DOZENS OF FALSE AND MISLEADING STATEMENTS ABOUT SMILEDIRECTCLUB

85. This section focuses on the false and misleading statements published by NBC during its broadcasted report on Nightly News, its online report posted to www.nbcnews.com, and

social media comments posted by NBC that included links to the broadcasted report and online report.

A. NBC made false and misleading statements regarding patients experiencing health and physical problems as a result of treatment using SDC’s platform.

86. In its Reports and comments, NBC falsely stated that treatment using SDC’s platform caused health and physical problems. NBC made the following statements that fall into this category:

- a. “Things didn’t feel right: Some SmileDirectClub customers report problems.” (Ex. 1, NBC Online Report at 1.)
- b. “While SmileDirectClub, the largest at-home dental alignment company, and others promise to leave patients smiling, an NBC News investigation into a **growing list of complaints** found that this new trend in straightening teeth is leading to **painful problems for some people**.” (Ex. 1, NBC Online Report at 2 (emphases added).)
- c. “But NBC News found complaints related to poor patient outcomes, including problems with bite and spacing.” (Ex. 1, NBC Online Report at 3.)
- d. “If customers can show the treatment didn’t work and want a refund outside the return window, SmileDirectClub requires they sign a confidentiality agreement, raising **the possibility that there may be more complaints than have been made public**.” (Ex. 1, NBC Online Report at 4 (emphasis added).)
- e. “[Male Patient] refused to sign that confidentiality agreement and was unable to get his money back. ‘It was basically like, here’s your money back, but you can’t ever talk about us,’ he said. ‘It’s not right. There are so many people out there putting their trust in a **company that should be doing right by you, and they’re not**.’” (Ex. 1, NBC Online Report at 4 (emphasis added).)
- f. “The Better Business Bureau reports more than 1,800 complaints nationwide involving SmileDirectClub. Most of the complaints involve customer service issues—such as broken aligners, delivery issues and payment problems—but **dozens describe concerns about treatment results: complaints like broken teeth and nerve damage**.” (Ex. 1, NBC Online Report at 2 (emphasis added).)

- g. Holt: “Now to our NBC news investigation and a look at a new trend in teeth straightening for much less than the cost of traditional braces. But some **patients complain these at-home treatments do not leave them smiling.**” (Ex. 3, NBC Broadcast Tr. at 2:1–5 (emphasis added).)
- h. Nguyen: “There have been more than 1,800 complaint filed with the Better Business Bureau nationwide. Most are customer service issues, but **dozens also include concerns about treatment results.**” (Ex. 3, NBC Broadcast Tr. at 3:20–23 (emphasis added).)
- i. Nguyen: “There have been a few complaints. I’m going back to the BBB, where people say, ‘the end result caused my teeth not to bite down, 10 months later, still in limbo, my bite is worse, my back teeth don’t touch on the left side.’” (Ex. 3, NBC Broadcast Tr. at 4:15–20.)
- j. Holt: “So Vicky, **orthodontists are clearly worried about their patients** and also maybe their business. But where to regulators come down on all this?” Nguyen: “Well, Lester, California just enacted the first law that would require a dentist to look at an x-ray before anyone can start this kind of treatment. That law in California also bans those confidentiality agreements.” (Ex. 3, NBC Broadcast Tr. at 6:22–7:6 (emphasis added).)
- k. Nguyen: “Things didn’t feel right: SmileDirectClub’s dental aligners cause problems. Tune in tonight for our investigation. On @NBCNightlyNews.” (Ex. 2, Tweet at 1.)
- l. NBC Nightly News: “SmileDirectClub, the largest at-home dental alignment company, promises to leave patients smiling. But an @NBCNews investigation found that **some customers have reported painful problems**, which the company says are caused by misuse.” (Ex. 2, Tweet at 2 (emphasis added).)
- m. NBC Nightly News: “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 2, Tweet at 3.)
- n. Nguyen: “SmileDirectClub says it has helped more than 750K people have access to more affordable teeth straightening. But now **some former customers are warning people about the quick fix.**” (Ex. 2, Tweet at 3 (emphasis added).)
- o. Nguyen: “We began our reporting last year and had already interviewed [Female Patient] before [KH News’s] piece ran. We did not know she spoke with your organization but our **reporting originated with complaints on social media, the BBB**, and our undercover investigation in the #SDC smile shops.” (Ex. 2, Tweet at 3 (emphasis added).)

87. NBC's intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC's teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor's prescription.

88. NBC's statements that treatment using SDC's platform caused health and physical problems for patients were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statements. NBC's statements were factually inaccurate and/or misleading for the following ten reasons.

89. First and foremost, NBC intentionally omitted from its Reports factual information showing the steps taken to ensure that the treatment of mild to moderate malocclusion by SDC-affiliated doctors using SDC's platform is safe. The absolute and relative safety of treatment of mild to moderate malocclusion by SDC-affiliated doctors using SDC's platform is the best (or among the very best) of any manner of treatment for this type of malocclusion. To the extent any patients have encountered clinical complications during their treatment, the total number of such patients is extremely small (in an absolute sense), and even moreso when compared to patients who have encountered these same types of clinical complications during treatment in a brick-and-mortar setting. By omitting these facts from its Reports, NBC created a materially misleading impression regarding the safety of the treatment patients receive from SDC-affiliated doctors using SDC's platform.

90. Second, the evaluation and treatment protocols followed by SDC-affiliated doctors using SDC's teledentistry platform prevent (and are designed to prevent) patients from being

treated if their treatment will cause health and physical problems. SDC-affiliated doctors using the SDC teledentistry platform do not approve patients for treatment using SDC's platform if they believe, in their clinical judgment—no different than if they were treating the patient in their physical office—that the treatment will cause health or physical problems.

91. Third, the monitoring and consultation protocols followed by SDC-affiliated doctors using the SDC teledentistry platform prevent (and are designed to prevent) patients from developing health and physical problems during their treatment, the same as if they were treating the patient in their physical offices. Patients are required to provide updated information for their SDC-affiliated doctors to review. Patients are also provided tools they can use to contact their SDC-affiliated doctors and their team of dental specialists made up of dental hygienists and dental assistants (“Dental Team”) with any concerns or problems that develop during their treatment. In fact, when using SDC's platform, patients have access to the SDC-affiliated doctor's Dental Team on a 24/7 basis, as opposed to the limited office hours of a traditional brick-and-mortar office.⁴

92. Fourth, SDC-affiliated doctors can (and do) adjust treatment plans and/or advise in-office treatment for patients in the event a patient begins to show signs of having health or physical problems during their treatment. The treatment plan originally developed for a patient can be (and is) adjusted if a patient develops any signs of health or physical problems with their treatment with a mid-course correction or is addressed with an in-office procedure. Just like in a traditional setting, the SDC-affiliated doctor is responsible for managing the care for their patient, including when treatment does not go as expected.

⁴ Members of SDC-affiliated doctors' Dental Teams are licensed hygienists and dental assistants that SDC provides as part of its DSO service offerings, but the team members do not make any clinical decisions. They are there to answer standard questions—no different than if a patient were to call a dentist's office and pose a question to a hygienist or dental assistant first to see if that individual can answer the patient's question. If it is a more specific, clinical question, or if the patient requests to speak with the doctor directly, a member of the staff passes along the concern to the SDC-affiliated doctor. The Dental Team member or SDC-affiliated doctor will follow up with the patient directly, depending on the nature of the question.

93. Fifth, SDC-affiliated doctors using SDC's platform receive information from the patient before initiating treatment to confirm that the patient does not have existing health or physical problems that would be exacerbated as a result of treatment by SDC-affiliated doctors using SDC's platform or clear aligners supplied by SDC. Among other things, patients provide health and medical information for the SDC-affiliated doctor to review as part of their assessment of whether the patient is a candidate for treatment. SDC-affiliated doctors review this information prior to approving a treatment plan for each patient and can and do require additional information and/or clearances when they, in their clinical judgment, determine that such information and/or clearances are necessary.

94. Sixth, on information and belief, treatment by SDC-affiliated doctors using SDC's platform did not cause any health or physical problems for the unidentified patients. NBC did not identify specific patients during its Reports other than Female Patient and Male Patient. However, given SDC's track record, the unidentified patients referenced in the Reports were (a) not actually treated using SDC's platform, (b) did not follow instructions or guidance provided by their SDC-affiliated doctor during their treatment, (c) terminated their treatment prematurely, and/or (d) did not provide their SDC-affiliated doctor with the opportunity and ability to address the alleged clinical concern.

95. Seventh, treatment by SDC-affiliated doctors using SDC's platform to provide clear aligner therapy is less risky for patients than treatment by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform to provide clear aligner therapy for cases of mild to moderate malocclusion. The risks to oral health associated with the treatment of mild to moderate malocclusion with clear aligners are less than those associated with the comprehensive treatment of more severe malocclusion by brick-and-mortar doctors using braces.

96. Eighth, patients treated by SDC-affiliated doctors using SDC's platform for the provision of clear aligner therapy experience fewer problems than patients treated by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform to provide clear aligner therapy for mild to moderate malocclusion, which results in minimal movement of the teeth over an extended period of time. This type of treatment is less prone to cause the type of hard- and soft-tissue damage seen in the treatment of more complex malocclusions by brick-and-mortar doctors using braces.

97. Ninth, the satisfaction and success rate for patients who are treated by SDC-affiliated doctors using SDC's platform is high. SDC's overall score by the Better Business Bureau ("BBB") is A+, the highest available rating. At the time of the Reports, the number of issues raised with the BBB by patients treated using SDC's platform, including non-clinical issues, was less than 0.2%. The number of issues raised with the BBB—by patients or non-patients (*i.e.*, people pretending to be patients)—regarding clinical issues was a small percentage of that infinitesimally small percentage, less than 0.001%.

98. Finally, on information and belief, individuals who criticize SDC or claim that physical or health issues were caused by treatment using SDC's platform often have not been treated by an SDC-affiliated doctor using SDC's platform. SDC makes this allegation based on the following facts: (a) SDC has come under attack by several dental trade associations and doctors who seek to prevent patients from having the choice to receive treatment outside of a traditional brick-and-mortar office; (b) those dental trade organizations and doctors have published defamatory and disparaging statements regarding SDC and treatment by SDC-affiliated doctors using SDC's platform; (c) SDC has identified some "patient" comments about alleged treatment by SDC-affiliated doctors by individuals who were not really SDC patients; and (d) dental trade

organizations and doctors practicing brick-and-mortar dentistry have a financial interest in disseminating false information about SDC and SDC-affiliated doctors.

B. NBC made false and misleading statements regarding patients experiencing permanent injuries as a result of treatment using SDC's platform.

99. In its Reports and comments, NBC falsely stated that treatment using SDC's platform can cause permanent injuries to patients. NBC made the following statements that fall into this category:

- a. "Dr. Chung Kau, chairman and professor of orthodontics at the University of Alabama in Birmingham, said moving teeth without in-person supervision can lead to permanent harm." (Ex. 1, NBC Online Report at 2.)
- b. "Problems with a person's bite aren't just cosmetic. 'If you can't get a proper bite, that affects the entire function of your jaw,' Kau said. 'You could get migraines, jaw joint problems, disintegration of your joints.'" (Ex. 1, NBC Online Report at 2.)
- c. **"It's important for teeth straightening patients to see an orthodontist regularly to make sure their bite is correct and their mouth is healthy overall,** Kau said. Regular visits with an orthodontist help ensure that everything is on track, Kau said. 'Every visit that we spend with a patient, we're constantly making adjustments so we can get the best, optimal care for the patient.'" (Ex. 1, NBC Online Report at 3 (emphasis added).)
- d. "All customers are required to see a dentist within six months before starting, which Greenspon Rammelt says offers proof that their teeth are healthy enough for the treatment. But NBC News hidden cameras recorded employees at SmileDirectClub shops in Ohio, New Jersey and Alabama advising potential customers they didn't have to see a dentist before starting treatment. (Ex. 1, NBC Online Report at 4.)
- e. "One employee said 'it's not mandatory' to see a dentist first. Another said, 'that's what the scans are for.' Kau, however, said the scans are just a map of the teeth and don't provide a full picture of someone's oral health." (Ex. 1, NBC Online Report at 4.)
- f. "Another employee said that the home impression kits used by thousands of customers who never set foot in a SmileDirectClub shop may not be reliable, and that 'anything could go wrong.'" (Ex. 1, NBC Online Report at 4.)

- g. “‘This harm is irreparable. I want to state that,’ [Kau] said. ‘It’s because things like bone loss, disease, loss of a tooth—you can’t put it back in the mouth.’ That is what happened to [Male Patient], 40, of Winnemucca, Nevada.” (Ex. 1, NBC Online Report at 3.)
- h. Nguyen: “Dr. Chung Kau, Chair of Orthodontics at The University of Alabama, says moving teeth without supervision in person can lead to permanent harm.” Kau: “Things like bone loss, disease, loss of a tooth.” (Ex. 3, NBC Broadcast Tr. at 4:3–7.)
- i. Nguyen: “There have been a few complaints. I’m going back to the BBB, where people say, ‘the end result caused my teeth not to bite down, 10 months later, still in limbo, my bite is worse, my back teeth don’t touch on the left side.’” (Ex. 3, NBC Broadcast Tr. at 4:15–20.)

100. NBC’s intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC’s teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor’s prescription.

101. NBC’s statements that treatment using SDC’s platform can cause permanent injuries to patients were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statements. NBC’s statements were factually inaccurate and/or misleading for thirteen reasons.

102. First and foremost, NBC intentionally omitted from its Reports factual information showing that the steps taken to ensure that the treatment of mild to moderate malocclusion by SDC-affiliated doctors using SDC’s platform prevent permanent or serious injuries. The absolute and relative safety of treatment of mild to moderate malocclusion by SDC-affiliated doctors using SDC’s platform is the best (or among the very best) of any manner of treatment for this type of malocclusion. To the extent any patients have encountered permanent or serious injuries as a result

of their treatment, the total number of such patients is extremely small (in an absolute sense), and even moreso when compared to patients who have suffered similar permanent or serious injuries as a result of the same treatment in a brick-and-mortar setting. By omitting these facts from its Reports, NBC created a materially misleading impression regarding the safety of the treatment patients receive from SDC-affiliated doctors using SDC's platform.

103. Second, the evaluation and treatment protocols followed by SDC-affiliated doctors using SDC's teledentistry platform prevent (and are designed to prevent) patients from being treated if their treatment will cause permanent or serious injuries. SDC-affiliated doctors using the SDC teledentistry platform do not approve patients for treatment using SDC's platform if they believe, in their clinical judgment—no different than if they were treating the patient in their physical office—that the treatment will cause permanent or serious injuries.

104. Third, the monitoring and consultation protocols followed by SDC-affiliated doctors using the SDC teledentistry platform prevent (and are designed to prevent) patients from developing permanent or serious injuries during their treatment, the same as if they were treating the patient in their physical office. Patients are required to provide updated information for their SDC-affiliated doctors to review. Patients are also provided tools they can use to contact their SDC-affiliated doctor and Dental Team with any concerns or problems that develop during their treatment. In fact, when using SDC's platform, patients have access to the SDC-affiliated doctor's Dental Team on a 24/7 basis, as opposed to the limited office hours of a traditional brick-and-mortar office.

105. Fourth, SDC-affiliated doctors can (and do) adjust treatment plans and/or advise in-office treatment for patients in the event a patient begins to show signs of having permanent or serious injuries during their treatment. The treatment plan originally developed for a patient can

be (and is) adjusted if a patient develops any early warning signs of permanent or serious injuries with their treatment with a midcourse correction or is addressed with an in-office procedure. Just like in a traditional setting, the SDC-affiliated doctor is responsible for managing the care of their patient, including when treatment does not go as expected.

106. Fifth, SDC-affiliated doctors using SDC's platform receive information from the patient before initiating treatment to confirm that the patient does not have existing health or physical problems that would be exacerbated as a result of treatment by SDC-affiliated doctors using SDC's platform or clear aligners supplied by SDC. Among other things, patients provide health and medical information for the SDC-affiliated doctor to review as part of their assessment of whether the patient is a candidate for treatment. SDC-affiliated doctors review this information prior to approving a treatment plan for each patient and can (and do) require additional information and/or clearances when they, in their clinical judgment, determine such information and/or clearances are necessary.

107. Sixth, on information and belief, treatment by SDC-affiliated doctors using SDC's platform has not caused any permanent or serious injuries for the unidentified patients. NBC did not identify specific patients during its Reports other than Female Patient and Male Patient; and, as discussed below, the treatment that Female Patient and Male Patient received from SDC-affiliated doctors using SDC's platform did not cause any injuries to these patients. NBC did not identify any patient who developed a permanent or serious injury as a result of their treatment by an SDC-affiliated doctor using SDC's platform.

108. Seventh, treatment by SDC-affiliated doctors using SDC's platform to provide clear aligner therapy is less risky for patients than treatment by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform to provide clear aligner therapy for cases of

mild to moderate malocclusion. The risks to oral health associated with the treatment of mild to moderate malocclusions with clear aligners are less than those associated with the comprehensive treatment of more severe malocclusion by brick-and-mortar doctors using braces.

109. Eighth, patients treated by SDC-affiliated doctors using SDC's platform for the provision of clear aligner therapy experience fewer problems than patients treated by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform for providing clear aligner therapy for mild to moderate malocclusion, which results in minimal movement of the teeth over an extended period of time. This type of treatment is less prone to cause the type of hard- and soft-tissue damage seen in the treatment of more complex malocclusions by brick-and-mortar doctors using braces.

110. Ninth, the satisfaction and success rate for patients who are treated by SDC-affiliated doctors using SDC's platform is high. SDC's overall score by the BBB is A+, the highest available rating. At the time of the Reports, the number of issues raised with the BBB by patients treated using SDC's platform, including non-clinical issues, was less than 0.2%. The number of issues raised with the BBB—by patients or non-patients (*i.e.*, people pretending to be patients)—regarding clinical issues was a small percentage of that infinitesimally small percentage, less than 0.001%.

111. Tenth, on information and belief, individuals who criticize SDC or claim that permanent or serious injuries were caused by treatment using SDC's platform often have not been treated by an SDC-affiliated doctor using SDC's platform. SDC makes this allegation based on the following facts: (a) SDC has come under attack by several dental trade associations and doctors who seek to prevent patients from having the choice to receive treatment outside of a brick-and-mortar office; (b) those dental trade associations and doctors have published defamatory and

disparaging statements regarding SDC and treatment by SDC-affiliated doctors using the SDC-platform; (c) SDC has identified some “patient” comments about alleged treatment by SDC-affiliated doctors by individuals who were not really SDC patients; and (d) dental trade associations and doctors practicing brick-and-mortar dentistry have a financial interest in disseminating false information about SDC and SDC-affiliated doctors.

112. Eleventh, Dr. Kau lacks credibility to discuss the treatment patients receive from SDC-affiliated doctors using SDC’s platform based on a lack of experience with SDC, its teledentistry platform, and DSO services. Dr. Kau is not a dentist or orthodontist affiliated in any way with SDC or any of the dental practices and their affiliated dentists and orthodontists who use SDC’s platform. Dr. Kau has not treated any patient using SDC’s platform, DSO services, or clear aligners supplied by SDC pursuant to a doctor’s prescription. On information and belief, Dr. Kau has not treated a patient that has suffered any of the permanent injuries he described as being caused by the patient’s treatment by an SDC-affiliated doctor using SDC’s platform.

113. Twelfth, Dr. Kau lacks credibility to discuss the treatment of patients with mild to moderate malocclusions based on lack of current experience. On information and belief, Dr. Kau is not a practicing dentist. SDC’s record search does not identify Dr. Kau as actively treating patients. Accordingly, Dr. Kau is not familiar with, and does not have firsthand experience, treating patients using a teledentistry platform, let alone SDC’s teledentistry platform.

114. Finally, Dr. Kau lacks credibility to discuss the treatment patients receive from SDC-affiliated doctors using SDC’s platform because he is biased. Dr. Kau has received a financial grant from Align Technology, the maker of Invisalign, one of SDC’s primary competitors. Dr. Kau is also developing a product for the treatment of mild to moderate

malocclusion that would compete with SDC's clear aligners; and, therefore, Dr. Kau, himself, is one of SDC's competitors with clear financial incentive to disparage SDC.

C. NBC made false and misleading statements regarding the thoroughness and extensiveness of the treatment patients receive through SDC's platform.

115. In its Reports and comments, NBC made false and misleading statements regarding the thoroughness and extensiveness of the treatment patients receive through SDC's platform.

NBC made the following statements that fall into this category:

- a. **"It's important for teeth straightening patients to see an orthodontist regularly** to make sure their bite is correct and their mouth is healthy overall, Kau said. Regular visits with an orthodontist help ensure that everything is on track, Kau said. 'Every visit that we spend with a patient, we're constantly making adjustments so we can get the best, optimal care for the patient.'" (Ex. 1, NBC Online Report at 3 (emphasis added).)
- b. "All customers are required to see a dentist within six months before starting, which Greenspon Rammelt says offers proof that their teeth are healthy enough for the treatment. But NBC News hidden camera recorded employees at SmileDirectClub shops in Ohio, New Jersey and Alabama **advising potential customers they didn't have to see a dentist before starting treatment.** One employee said 'it's not mandatory' to see a dentist first. Another said, 'that's what the scans are for.' Kau, however, said the scans are just a map of the teeth and don't provide a full picture of someone's oral health." (Ex. 1, NBC Online Report at 4 (emphasis added).)
- c. "Another employee said that the **home impression kits used by thousands of customers who never set foot in a SmileDirectClub shop may not be reliable**, and that 'anything could go wrong.'" (Ex. 1, NBC Online Report at 4 (emphasis added).)
- d. "To get started, SmileDirectClub customers either can get a 3D image of their teeth in one of their SmileShops or have an at-home kit sent to them. **A few weeks later, she received dental aligners** and followed the instructions to send in photos of her mouth every 90 days. SmileDirectClub told her the treatment would be reviewed remotely by one of its 250 dentists and orthodontists. All of her care was done online, she said. After a year, [Female Patient] was in pain." (Ex. 1, NBC Online Report at 1–2 (emphasis added).)
- e. **"SmileDirectClub reviews all patient scans before sending the first treatment kits**, and only sends them to patients that they think are good candidates." (Ex. 1, NBC Online Report at 4 (emphasis added).)

- f. Nguyen: “The ads promise to straighten your teeth in six months on average, for under two grand. **Get a scan in the store or kit through the mail, do the rest from home.**” (Ex. 3, NBC Broadcast Tr. at 2:8–17 (emphasis added).)
- g. Nguyen: “[Female Patient] ordered a kit and took an impression of her teeth.” [Female Patient]: “They would have you take the two different putties and mix them all together and then put it in your mouth.” Nguyen: “**A few weeks later, she received dental aligners** and followed the instructions to send in photos of her mouth every 90 days.” (Ex. 3, NBC Broadcast Tr. at 2:21–3:4 (emphasis added).)
- h. Nguyen: “SmileDirectClub told her that treatment would be reviewed remotely by one of its 250 dentists and orthodontists. So this is all done online?” [Female Patient]: “Yes.” Nguyen: “After a year, [Female Patient] was in pain and she says she tried but couldn’t speak to her assigned dentist.” (Ex. 3, NBC Broadcast Tr. at 3:4–11.)
- i. Nguyen: “[Susan Greenspon Rammelt] says 95 percent of people reviewed for treatment are accepted. **They’re required to see a dentist within six months before starting. But that’s not what we found with our hidden cameras.**” (Ex. 3, NBC Broadcast Tr. at 5:2–5 (emphasis added).)
- j. Nguyen: “I don’t have to go see a dentist first.” Female 1: “No.” Nguyen: “If I don’t want to.” Female 1: “If you don’t want to, it’s not mandatory.” (Ex. 3, NBC Broadcast Tr. at 5:6–11.)
- k. Nguyen: “So do I ever have to see a dentist before I start or anything like that?” Female 2: “I’m—so that’s what—that’s what our photos and stuff are for.” (Ex. 3, NBC Broadcast Tr. at 5:12–15.)
- l. Nguyen: “This employee told us the at-home impression kits may not be reliable.” Female 3: “I mean, even as a dental assistant, there’s always prone for human error. Taking them and especially relying on somebody who’s never done them before to do it, anything could go wrong.” (Ex. 3, NBC Broadcast Tr. at 5:20–6:2.)

116. NBC’s intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC’s teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor’s prescription.

117. NBC's statements regarding the treatment patients receive through SDC's platform were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statement. NBC's statements were factually inaccurate and/or misleading for eleven reasons.

118. First and foremost, NBC intentionally omitted from its Reports steps that are taken to ensure that: SDC-affiliated doctors receive the necessary and requested information and/or clearances regarding patients before being approved for treatment to ensure they are an appropriate candidate for treatment with clear aligners using a teledentistry platform; SDC-affiliated doctors oversee and undertake steps to ensure the correct treatment plan is created for a patient before prescribing their clear aligners and having them manufactured; and SDC-affiliated doctors monitor treatment throughout the treatment at least every 90 days. By omitting these facts from its Reports, NBC created a materially misleading impression regarding the thoroughness of the treatment patients receive from SDC-affiliated doctors using SDC's platform.

119. Second, SDC-affiliated doctors oversee every step of the treatment of patients. SDC-affiliated doctors have full discretion over: the determination of whether a patient is a candidate for clear aligner therapy using a teledentistry platform; the information needed to diagnosis a patient; the modification, finalization and approval of a treatment plan for the patient; monitoring a patient during the treatment period; adjusting a treatment plan during the treatment period; and requesting that a patient obtain additional information and/or clearances about their teeth and oral health before, during, and after treatment.

120. Third, SDC does not treat patients. SDC does not practice dentistry. SDC has no discretion over any aspect of patient care, including determining whether a patient is a candidate

for clear aligner therapy using a teledentistry platform or whether the customized treatment plan is proper for that patient. SDC is not responsible for straightening a patient's teeth or treating a patient's mild to moderate malocclusion. SDC-affiliated doctors have exclusive and complete control over those activities.

121. Fourth, SDC-affiliated doctors receive dental and medical histories from patients to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The dental and medical histories received by the SDC-affiliated doctors are provided by the patients. SDC-affiliated doctors use the dental and medical histories to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after their SDC-affiliated doctor has reviewed the patient's dental and medical information.

122. Fifth, SDC-affiliated doctors receive pictures of a patient's teeth, gums, and mouth to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The pictures are provided either directly by the patient, by the patient's regular dentist, or by a SmileShop employee gathering the information from the patient. SDC-affiliated doctors use the pictures to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's pictures.

123. Sixth, SDC-affiliated doctors receive 3D images of a patient's teeth and gums to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The 3D image is generated either by their regular dentist's office, a SmileShop employee gathering information from the patient, or by a technician based on an impression provided by the patient or the patient's regular dentist. The

3D image provides the SDC-affiliated doctor with a better view of a patient's overall teeth and mouth than a brick-and-mortar doctor can view. SDC-affiliated doctors use the 3D image to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's 3D image.

124. Seventh, SDC-affiliated doctors review the patient's questionnaire, including the desired outcome, to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The patient's desired outcome informs the SDC-affiliated doctor of the patient's dental concerns and expectations from clear aligner therapy. SDC-affiliated doctors use the patient questionnaires to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's questionnaire.

125. Eighth, after receiving the information identified above, SDC-affiliated doctors can (and do) request additional information and/or clearances from patients if they determine that the information initially provided is not sufficient to make a determination regarding whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. For example, SDC-affiliated doctors can (and do) request that patients obtain x-rays if the doctor determines that information is necessary to determine whether a patient is a candidate for clear aligner therapy and the treatment plan best suited for the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has determined that he or she does not need any additional information and/or clearances from the patient.

126. Ninth, SDC-affiliated doctors prepare a customized treatment plan for each patient based on all the information provided to and reviewed by the SDC-affiliated doctor. SDC-affiliated doctors review recommended, customized draft treatment plans that are prepared by highly trained lab technicians who are overseen by a group of approximately 60 licensed dentists and orthodontists as an additional quality control measure. SDC-affiliated doctors then reject, modify, or approve the treatment plan based on their review of the information provided about the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed, modified as necessary, and approved a treatment plan for the patient that is best suited to achieving the patient's desired outcome.

127. Tenth, SDC-affiliated doctors monitor their patients' treatment after they have begun using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors monitor treatment by, among other things, reviewing updated photographs posted by the patient to SDC's platform at least every 90 days and reviewing a questionnaire. SDC-affiliated doctors review the updated photographs and questionnaire to determine whether the patient's treatment and teeth movement is progressing as anticipated pursuant to the treatment plan. SDC-affiliated doctors inform patients to terminate or alter their treatment if the photographs or questionnaire identify any problems or concerns with the treatment, or they modify the treatment plan if the patient has concerns or is not otherwise pleased with the treatment.

128. Finally, SDC-affiliated doctors respond to questions and concerns raised by patients after they have begun treatment using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors respond to questions and concerns raised by patients by (a) arranging for a dental hygienist or dental assistant to be available to patients to answer any questions over the phone, chat, text, or communicated through email via SDC's platform on a 24/7

basis; (b) responding to email communications from patients regarding their treatment; (c) speaking with patients over the phone regarding their treatment; and (d) seeing the patient in person if that is geographically feasible and desired by the patient. Patients can (and do) communicate with their SDC-affiliated doctor using various tools regarding any concerns they may have regarding their treatment.

D. NBC made false and misleading statements regarding Female Patient’s treatment through SDC’s platform.

129. In its Reports and comments, NBC falsely stated that Female Patient was injured as a result of her treatment through SDC’s platform. NBC made the following statements that fall into this category:

- a. “A few weeks later, she received dental aligners and followed the instructions to send in photos of her mouth every 90 days. SmileDirectClub told her the treatment would be reviewed remotely by one of its 250 dentists and orthodontists. All of her care was done online, she said. **After a year, [Female Patient] was in pain.**” (Ex. 1, NBC Online Report at 1–2 (emphasis added).)
- b. “‘I really noticed that things didn’t feel right with the bite,’ [Female Patient] said. **‘My head was hurting frequently.’**” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- c. “So she consulted an outside orthodontist, who **diagnosed her with a crossbite, or misalignment, possibly caused by the aligners.**” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- d. “What’s more, [Female Patient’s] orthodontist said the **crossbite was causing other symptoms: strain in her neck and jaw muscles, which led to migraines.**” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- e. “[Female Patient], who says she tried SmileDirectClub because of the money she thought she’d save, wound up spending thousands on traditional braces to fix her teeth.” (Ex. 1, NBC Online Report at 2).)
- f. Nguyen: “SmileDirectClub told her that treatment would be reviewed remotely by one of its 250 dentists and orthodontists. So this is all done online?” [Female Patient]: “Yes.” Nguyen: “After a year, **[Female Patient] was in pain** and she says she tried but couldn’t speak to her assigned dentist.” (Ex. 3, NBC Broadcast Tr. at 3:4–11 (emphasis added).)

- g. Nguyen: “So [Female Patient] found an orthodontist who **diagnosed her with a cross bite possibly caused by the aligners, straining her neck and jaw muscle, sparking migraines.**” (Ex. 3, NBC Broadcast Tr. at 3:11–14 (emphasis added).)
- h. [Female Patient]: “I really noticed that things like didn’t feel right with the bite, **my head was hurting frequently.**” (Ex. 3, NBC Broadcast Tr. at 3:15–17 (emphasis added).)

130. NBC’s intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC’s teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor’s prescription.

131. NBC’s statements that Female Patient was injured as a result of her treatment through SDC’s platform were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statements. NBC’s statements were factually inaccurate and/or misleading for nine reasons.

132. First and foremost, Female Patient’s alleged injuries are not (and cannot be) connected to her treatment by her SDC-affiliated doctor using SDC’s platform. Not only did NBC inaccurately connect Female Patient’s alleged injuries to her treatment by her SDC-affiliated doctor using the SDC teledentistry platform, NBC intentionally omitted from its Reports the steps taken to ensure that such injuries could not be caused by her treatment, the improbability that Female Patient’s alleged injuries were (or could be) caused by her treatment, and the other reasons that Female Patient may have the alleged injuries. By omitting these facts from its Reports, NBC created a materially misleading impression regarding the safety of the treatment patients receive from SDC-affiliated doctors using SDC’s platform.

133. Second, Female Patient was not injured as a result of the treatment she received from an SDC-affiliated doctor using SDC's platform. Female Patient was properly identified by her SDC-affiliated doctor as a candidate for treatment and her treatment plan was appropriate as determined by her SDC-affiliated doctor. The SDC-affiliated doctor who treated Female Patient was a dentist licensed in seven states, which NBC also failed to disclose.

134. Third, during her treatment period, Female Patient did not raise concerns with her SDC-affiliated doctor or the Dental Team regarding pain or physical issues with her treatment. Specifically, Female Patient did not indicate that she was experiencing pain in her mouth or head. Nor did Female Patient request to speak to her SDC-affiliated doctor regarding any pain in her mouth or head.

135. Fourth, during her treatment period, Female Patient never requested to speak with her SDC-affiliated doctor. Female Patient communicated with SDC's Dental Team regarding the progression of her treatment.

136. Fifth, during her treatment, Female Patient eventually ceased communicating with the SDC Dental Team members who reached out to her on multiple occasions regarding her treatment. Female Patient also stopped making payments for her treatment. Female Patient's access to additional aligners for her refinements ended as a result of her refusal to make payments for the treatment.

137. Sixth, Female Patient lacks credibility to discuss health and physical problems allegedly caused by her treatment by her SDC-affiliated doctor based on her bias. Female Patient wanted her SDC-affiliated doctor to continue treatment even after she stopped making payments. On information and belief, Female Patient fabricated her claim regarding her treatment causing problems to retaliate against SDC.

138. Seventh, Female Patient lacks credibility to discuss health and physical problems allegedly caused by her treatment by her SDC-affiliated doctor based on her lack of candor. Female Patient has a criminal record that was not disclosed by NBC in its Reports. Female Patient's criminal record relates to activity that undermines her trustworthiness and honesty.

139. Eighth, on information and belief, Female Patient's orthodontist did not conclude that her treatment by her SDC-affiliated doctor caused her complained of physical and health issues. SDC makes this allegation based on the following underlying facts: (a) Female Patient did not raise any complaints about physical and health issues during her discussions with the Dental Team; (b) Female Patient's treatment plan was not such that it would have likely caused her complained of physical and health issues; and (c) NBC would have included a statement from Female Patient's orthodontist in its Reports had such a diagnosis been made.

140. Finally, Female Patient's experience is not typical of the experience of individuals who are currently being treated by SDC-affiliated doctors using SDC's platform.

E. NBC made false and misleading statements regarding Male Patient's treatment through SDC's platform.

141. In its Reports and comments, NBC falsely stated that Male Patient was injured as a result of his treatment through SDC's platform. NBC made the following statements that fall into this category:

- a. "‘This harm is irreparable. I want to state that,’ [Kau] said. ‘It’s because things like bone loss, disease, loss of a tooth—you can’t put it back in the mouth.’ That’s what happened to [Male Patient], 40, of Winnemucca, Nevada.” (Ex. 1, NBC Online Report at 3.)
- b. “[Male Patient] told NBC News that his dentist said the SmileDirectClub aligners moved his teeth so fast that it caused some of them to detach from the bone.” (Ex. 1, NBC Online Report at 3.)
- c. “‘Now I stand to lose two to three of my bottom teeth and two to three of my front teeth,’ [Male Patient] said. ‘Every day I wake up—it feels like I

am being punched. It's just an all day type pain.'" (Ex. 1, NBC Online Report at 3.)

142. NBC's intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC's teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor's prescription.

143. NBC's statements that Male Patient was injured as a result of his treatment through SDC's platform were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statements. NBC's statements were factually inaccurate and/or misleading for seven reasons.

144. First and foremost, Male Patient's alleged injuries are not (and cannot be) connected to his treatment by an SDC-affiliated doctor using SDC's platform. Not only did NBC inaccurately connect Male Patient's alleged injuries to his treatment by a SDC-affiliated doctor using the SDC teledentistry platform, NBC intentionally omitted from its Reports the steps taken to ensure that such injuries could not be caused by his treatment, the improbability that Male Patient's alleged injuries were (or could be) caused by his treatment, and the other reasons that Male Patient may have the alleged injuries. By omitting these facts from its Reports, NBC created a materially misleading impression regarding the safety of the treatment patients receive from SDC-affiliated doctors using SDC's platform.

145. Second, Male Patient was not injured as a result of the treatment he received from an SDC-affiliated doctor using SDC's platform. Male Patient was properly identified by his SDC-

affiliated doctor as a candidate for treatment and his treatment plan was appropriate as determined by his SDC-affiliated doctor.

146. Third, during his treatment period, Male Patient did not raise concerns with his SDC-affiliated doctor or the Dental Team regarding permanent injuries purportedly caused by his treatment. Nor did Male Patient request to speak to his SDC-affiliated doctor regarding permanent injuries purportedly caused by his treatment.

147. Fourth, Male Patient did not follow instructions or cooperate with his SDC-affiliated doctor during his treatment. Following an inquiry by Male Patient's wife regarding her husband's treatment, a member of the Dental Team, on behalf of Male Patient's SDC-affiliated doctor, asked Male Patient to obtain a video for review by his SDC-affiliated doctor. These videos are easy to create via cell phone and are often provided by patients when requested by their SDC-affiliated doctor or their office staff. Male Patient refused to provide the requested video, making it impossible for his SDC-affiliated doctor to assess or discuss any concerns. Male Patient self-terminated his treatment before post-treatment follow-up recommendations could be made or completed by his SDC-affiliated doctor.

148. Fifth, Male Patient lacks credibility to discuss health and physical problems allegedly caused by his treatment by his SDC-affiliated doctor based on his bias. Male Patient did not have physical problems caused by his treatment. Male Patient did not follow his SDC-affiliated doctor's instructions regarding his treatment, refused to cooperate with his SDC-affiliated doctor's requests for information, and prematurely terminated his treatment. On information and belief, Male Patient fabricated his claim regarding his treatment causing physical problem to retaliate against SDC.

149. Sixth, on information and belief, Male Patient's orthodontist did not conclude that his treatment by his SDC-affiliated doctor caused his complained of physical and health issues. SDC makes this allegation based on the following underlying facts: (a) Male Patient did not raise any complaints about permanent physical problems with his SDC-affiliated doctor or the Dental Team during treatment; (b) Male Patient's treatment plan was not such that it would have likely caused his complained of permanent physical problems; (c) certain effects are part of the orthodontic treatment whether done through teledentistry or in a brick-and-mortar office; and (d) NBC would have included a statement from Male Patient's orthodontist in its Reports had such a diagnosis been made.

150. Finally, Male Patient's purported experience is not typical of the experience of individuals who are currently being treated by SDC-affiliated doctors using SDC's platform.

F. NBC made false and misleading statements regarding patients needing protection from treatment through SDC's platform.

151. In its Reports and comments, NBC falsely stated that current and potential patients need protection from treatment through SDC's platform. NBC made the following statements that fall into this category:

- a. "Last month, nine members of Congress asked the Food and Drug Administration and the Federal Trade Commission to investigate SmileDirectClub 'to ensure that it is **not misleading consumers or causing patient harm.**'" (Ex. 1, NBC Online Report at 2 (emphasis added).)
- b. "And in January, **in an effort to protect patients**, a law went into effect in California requiring all teledentistry patients to get an x-ray before undergoing online aligner treatment. Virginia is considering similar rules." (Ex. 1, NBC Online Report at 2) (emphasis added).)
- c. Nguyen: "And now, nine congressmen have asked the FDA and FTC to investigate SmileDirectClub to ensure it is **not misleading consumers or causing patient harm.**" (Ex. 3, NBC Broadcast Tr. at 3:23–4:2 (emphasis added).)

152. NBC's intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC's teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor's prescription.

153. NBC's statements that current and potential patients need protection from treatment through SDC's platform were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statements. NBC's statements were factually inaccurate and/or misleading for eight reasons.

154. First and foremost, NBC misrepresented the absolute and relative safety of treatment of mild to moderate malocclusion by SDC-affiliated doctors using SDC's platform. Treatment by SDC-affiliated doctors using SDC's platform is as safe or safer than treatment in a traditional brick-and-mortar office. Moreover, NBC omitted from its report the bias of the Congressmen who wrote to the FDA and FTC and the state representative (Evan Low) involved with the California regulation discussed in the Reports. The Congressmen and state representative who led the actions discussed in the Reports have financial ties to dental organizations and doctors who are attempting to block teledentistry, generally, and SDC, in particular. Further, their letters to the FDA and FTC repeated the petitioning that was filed by the ADA almost a year before the Reports, and neither resulted in an investigation by either the FDA or FTC. By misrepresenting and omitting these facts from its Reports, NBC created a materially misleading impression regarding the safety of the treatment patients receive from SDC-affiliated doctors using SDC's platform.

155. Second, SDC-affiliated doctors using SDC's teledentistry platform prevent patients from being treated if their treatment will cause harm. SDC-affiliated doctors using the SDC teledentistry platform do not approve patients for treatment using SDC's platform if they believe, in their clinical judgment—no different than if they were treating the patient in their physical office—that the treatment will cause harm.

156. Third, SDC-affiliated doctors using the SDC teledentistry platform follow monitoring and consultation protocols, the same as if they were treating the patient in their physical offices. Patients are required to provide updated information for their SDC-affiliated doctors to review. Patients are also provided tools they can use to contact their SDC-affiliated doctor and dental specialists with any concerns or problems that develop during their treatment. In fact, when using SDC's platform, patients have access to the SDC-affiliated doctor's Dental Team on a 24/7 basis, as opposed to the limited office hours of a traditional brick-and-mortar office.

157. Fourth, SDC-affiliated doctors can (and do) adjust treatment plans and/or advise in-office treatment for patients that have any issues during treatment. The treatment plan originally developed for a patient can be (and is) adjusted with a midcourse correction or is addressed with an in-office procedure. Just like in a traditional setting, the SDC-affiliated doctor is responsible for managing the care for their patient, including when treatment does not go as expected.

158. Fifth, SDC-affiliated doctors using SDC's platform receive information from the patient before initiating treatment to confirm that the patient does not have existing health or physical problems that would be exacerbated as a result of treatment using SDC's platform or clear aligners supplied by SDC. Among other things, patients provide health and medical information for the SDC-affiliated doctor to review as part of the SDC-affiliated doctor's assessment of whether the patient is a candidate for treatment. SDC-affiliated doctors review this information

prior to approving a treatment plan for each patient and can and do require additional information and/or clearances when they, in their clinical judgment, determine such information and/or clearances are necessary.

159. Sixth, treatment by SDC-affiliated doctors using SDC's platform to provide clear aligner therapy is less risky for patients than treatment by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform to provide clear aligner therapy for cases of mild to moderate malocclusion. The risks to oral health associated with the treatment of mild to moderate malocclusions with clear aligners are less than those associated with the comprehensive treatment of more severe malocclusion by brick-and-mortar doctors using braces.

160. Seventh, patients treated by SDC-affiliated doctors using SDC's platform for the provision of clear aligner therapy experience fewer problems than patients treated by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform for providing clear aligner therapy for mild to moderate malocclusion, which results in minimal movement of the teeth over an extended period of time. This type of treatment is less prone to cause the type of hard- and soft-tissue damage seen in the treatment of more complex malocclusions by brick-and-mortar doctors using braces.

161. Finally, the Congressmen who wrote to the FDA/FTC and the state representative (Evan Low) involved with the California regulation discussed in the Reports lack credibility because of their biases. The Congressmen and Mr. Low have significant financial connections with dental trade associations that have lobbied against teledentistry, generally, and SDC, in particular.

G. NBC made false and misleading statements regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

162. In its Reports and comments, NBC falsely implied that treatment through SDC's platform violates state and federal regulations governing the practice of dentistry. NBC made the following statements that fall into this category:

- a. "Last month, nine members of Congress asked the Food and Drug Administration and the Federal Trade Commission to investigate SmileDirectClub 'to ensure that it is not misleading consumers or causing patient harm.'" (Ex. 1, NBC Online Report at 2.)
- b. "And in January, in an effort to protect patients, a law went into effect in California requiring all teledentistry patients to get an x-ray before undergoing online aligner treatment. Virginia is considering similar rules." (Ex. 1, NBC Online Report at 2.)
- c. Nguyen: "And now, nine congressmen have asked the FDA and FTC to investigate SmileDirectClub to ensure it is not misleading consumers or causing patient harm." (Ex. 3, NBC Broadcast Tr. at 3:23-4:2.)
- d. Holt: "So Vicky, orthodontists are clearly worried about their patients and also maybe their business. But where do regulators come down on all this?" Nguyen: "Well, Lester, California just enacted the first law that would require a dentist to look at an x-ray before anyone can start this kind of treatment. That law in California also bans those confidentiality agreements." (Ex. 3, NBC Broadcast Tr. at 6:22-7:6.)

163. NBC's intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC's teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor's prescription.

164. NBC's statements regarding compliance with state and federal regulations were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide

proper context for the statements. NBC's statements were factually inaccurate and/or misleading for nine reasons.

165. First and foremost, NBC omitted material facts about the purported "investigation" into SDC and misrepresented the state regulations. NBC failed to report that SDC was not being investigated by the federal agencies. NBC also misrepresented that the state regulations mentioned in the Reports (California and Virginia) require x-rays before treatment for mild to moderate malocclusions. They do not. By omitting and misrepresenting these facts from its Reports, NBC created a materially misleading impression regarding whether the treatment that patients receive from SDC-affiliated doctors using SDC's platform complies with federal and state regulations.

166. Second, at the time of the Reports, and as is still true today upon the filing of this Complaint, there was no investigation into SDC by the FDA or the FTC. The FDA had previously declined a similar request by the ADA to conduct an investigation into SDC. NBC mentioned a letter by the Congressmen requesting an investigation, but it failed to report that the FDA and FTC did not initiate an investigation in response and that neither agency had investigated SDC despite the earlier request by the ADA based upon similar allegations in its petitions.

167. Third, at the time of the Reports, SDC was (and continues to be) in full compliance with FDA and FTC regulations. The FDA has never found SDC to be in violation of any of its regulations. Nor has the FTC ever found SDC to be in violation of any of its regulations. NBC mentioned a letter by the Congressmen requesting an investigation of SDC by the FDA or FTC, but it failed to report these facts even though NBC was expressly informed of them.

168. Fourth, the California regulation does not require patients to receive an x-ray prior to receiving treatment for mild to moderate malocclusion. The California regulation requires a treating doctor to review a patient's "most recent diagnostic digital or conventional radiographs or

other equivalent bone imaging suitable for orthodontia” before treating “malpositions” of teeth. Cal. Assembly Bill No. 1519, ch. 865, p. 35. SDC’s platform enables the SDC-affiliated doctors licensed in the State of California to comply with this law and requires SDC-affiliated doctors, as it does of all doctors who use its platform, to comply with the laws of the state in which they practice dentistry using SDC’s teledentistry platform. NBC misstated the California regulation to create the impression that the process followed by SDC-affiliated doctors violates California law because patients are not required to have x-rays before starting treatment for their mild to moderate malocclusion.

169. Fifth, the proposed Virginia regulation did not require patients to receive an x-ray prior to receiving treatment for mild to moderate malocclusion. Similar to the California regulation, the proposed Virginia regulation stated that “[n]o dentist shall provide or order an appliance for a patient through teledentistry without first reviewing bone images or x-rays of the patient and documenting such review in the patient's medical record.” Proposed Va. Senate Bill No. 210. Notably, the final version of this Senate Bill did not contain this requirement when it was ultimately passed and signed into law by the Governor of Virginia. More notably, SDC was in favor of the final version of the Virginia regulation that was turned into law. SDC’s platform enables the SDC-affiliated doctors licensed in the State of Virginia to comply with this law and requires SDC-affiliated doctors, as it does of all doctors, to comply with the laws of the state in which they practice dentistry using SDC’s teledentistry platform. NBC misstated the requirements of the proposed Virginia regulation to create the impression that the process followed by SDC-affiliated doctors will violate Virginia law because patients are not required to have x-rays before starting treatment for their mild to moderate malocclusion.

170. Sixth, the California regulation does not prohibit the confidentiality provisions agreed to by patients and SDC in connection with resolving actual and potential disputes outside of SDC's refund policy. When patients seek a refund or other compensation outside of SDC's refund policy, those patients are asked to sign a release. The form of release, as is typical in any settlement where the releasing party receives consideration, contains confidentiality clauses. In fact, AAO's website recommends the same type of confidentiality provisions to its members. The California regulation prohibits doctors from "requir[ing] a patient to sign an agreement that limits the patient's ability to file a complaint" with the Dental Board of California. Cal. Assembly Bill No. 1519, ch. 865, p. 36. SDC and SDC-affiliated doctors do not ask or require patients to sign confidential agreements prior to starting treatment or as a condition to receiving treatment, and therefore they cannot and do not limit a patient's ability to file a complaint with the Dental Board of California. NBC misstated the California regulation to create the impression that the process followed by SDC and SDC-affiliated doctors violates California law.

171. Seventh, when deemed necessary by the SDC-affiliated doctor, SDC-affiliated doctors using SDC's platform require patients to receive x-rays prior to approving and initiating clear aligner therapy. SDC-affiliated doctors receive significant information regarding a patient as part of their determination of whether a patient is a candidate for treatment using clear aligners and approving a treatment plan. During that review, if the SDC-affiliated doctor determines that he or she needs additional information from the patient before making those determinations, including an x-ray, the SDC-affiliated doctor requests that information. SDC-affiliated doctors do not approve a patient for treatment without reviewing an x-ray if the SDC-affiliated doctor determines that he or she needs that information to decide whether the patient is a proper candidate for clear aligner therapy using a teledentistry platform and the proper treatment plan.

172. Eighth, SDC-affiliated doctors using SDC’s platform to treat patients in California request and review the most recent x-rays or other bone imaging suitable for orthodontia, in their clinical judgment, prior to approving and initiating clear aligner therapy, in compliance with California law. Compliance with California law is a requirement of the SDC-affiliated doctors licensed to treat patients in that state, not SDC. SDC’s teledentistry platform ensures that SDC-affiliated doctors can comply with California law. NBC was specifically informed of these facts but intentionally did not share them.

173. Finally, the Congressmen who wrote to the FDA/FTC and the state representative (Evan Low) involved with the California regulation discussed in the Reports lack credibility because of their biases. The Congressmen and Mr. Low have significant financial connections with dental trade associations that have lobbied against teledentistry, generally, and SDC, in particular.

H. NBC made false and misleading statements describing treatment through SDC’s platform as “do it yourself” dentistry.

174. In its Reports and comments, NBC falsely stated that treatment through SDC’s platform is “do it yourself” dentistry. NBC made the following statements that fall into this category:

- a. “While SmileDirectClub, the largest **at-home dental alignment company**, and others promise to leave patients smiling, an NBC News investigation into a growing list of complaints found that this new trend in straightening teeth is leading to painful problems for some people.” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- b. “The **at-home kits** offer to straighten teeth for a fraction of the cost of braces. But is it worth it?” (Ex. 1, NBC Online Report at 1 (emphasis added).)
- c. “[Female Patient] was drawn to the advertisements for SmileDirectClub, which promises to straighten teeth for under \$2,000—about a third the cost of traditional braces—in as little as six months and **all from the comfort of home.**” (Ex. 1, NBC Online Report at 1 (emphasis added).)

- d. “To get started, SmileDirectClub customers either can get a 3D image of their teeth in one of their SmileShops or have an at-home kit sent to them. **A few weeks later, she received dental aligners** and followed the instructions to send in photos of her mouth every 90 days.” (Ex. 1, NBC Online Report at 1 (emphasis added).)
- e. Holt: “Now to our NBC News investigation and a look at a new trend in teeth straightening for much less than the cost of traditional braces. But some patients complain these **at-home treatments** do not leave them smiling.” (Ex. 3, NBC Broadcast Tr. at 2:1–5 (emphasis added).)
- f. Nguyen: “The ads promise to straighten your teeth in six months on average, for under two grand. Get a scan in the store or kit through the mail, **do the rest from home.**” (Ex. 3, NBC Broadcast Tr. at 2:8–17 (emphasis added).)
- g. Nguyen: “[Female Patient] ordered a kit and took an impression of her teeth.” [Female Patient]: “They would have you take the two different putties and mix them all together and then put it in your mouth.” Nguyen: “**A few weeks later, she received dental aligners** and followed the instructions to send in photos of her mouth every 90 days.” (Ex. 3, NBC Broadcast Tr. at 2:21–3:4 (emphasis added).)
- h. Nguyen: “SmileDirectClub told her that treatment would be reviewed remotely by one of its 250 dentists and orthodontists. So this is all done online?” [Female Patient]: “Yes.” Nguyen: “After a year, [Female Patient] was in pain and she says she tried but couldn’t speak to her assigned dentist.” (Ex. 3, NBC Broadcast Tr. at 3:4–11.)
- i. NBC Nightly News: “SmileDirectClub, the largest **at-home dental alignment company**, promises to leave patients smiling. But an @NBCNews investigation found that some customers have reported painful problems, which the company says are caused by misuse.” (Ex. 2, Tweet at 2 (emphasis added).)

175. NBC’s intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC’s teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor’s prescription.

176. NBC’s statements that treatment through SDC’s platform is “do it yourself” dentistry were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about

SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statements. NBC's statements were factually inaccurate and/or misleading for eleven reasons.

177. First and foremost, NBC intentionally omitted from its Reports that SDC-affiliated doctors are responsible for all clinical decisions and oversee and participate in every step of patient treatment. SDC-affiliated doctors using SDC's platform: receive any and all information and clearances that they deem desirable or necessary regarding patients before their treatment begins to ensure that they are an appropriate candidate for treatment with clear aligners using a teledentistry platform; oversee and undertake steps to ensure the correct treatment plan is developed for a patient before they prescribe clear aligner therapy and before they prescribe the manufacturing of the clear aligners; monitor treatment after patients receive their aligners throughout treatment with remote check-ins at least every 90 days; and, with Dental Team members made up of dental hygienists and dental assistants, consult with patients after they begin their clear aligner therapy. By omitting these facts from its Reports, NBC created a materially misleading impression that treatment using SDC's platform is "do it yourself" dentistry, meaning that patients are treating themselves without involvement and oversight by doctors when, in fact, SDC-affiliated doctors are involved the same amount, if not more, than dentists and orthodontists in traditional brick-and-mortar practices.

178. Second, SDC is not a dental alignment company. SDC is an oral care company that offers, among other products and services, a med-tech platform that enables dentists and orthodontists to treat patients with mild to moderate malocclusions with clear aligner therapy using a teledentistry platform. SDC is hired by professional corporations and their affiliated dentists and orthodontists to provide a variety of services, including accounting, billing and collections,

customer service, and the sourcing of supplies. NBC's description of SDC as a dental alignment company suggests that SDC, as opposed to SDC-affiliated doctors, is responsible for straightening a patient's teeth.

179. Third, SDC-affiliated doctors oversee every step of the treatment of patients. SDC-affiliated doctors have full discretion over: the determination of whether a patient is a candidate for clear aligner therapy using a teledentistry platform; the information needed to diagnosis a patient; the modification, finalization, and approval of a treatment plan for the patient; monitoring a patient during the treatment period; adjusting a treatment plan during the treatment period; and requesting that a patient obtain additional information and/or clearances about her teeth and oral health before, during, and after treatment.

180. Fourth, SDC-affiliated doctors receive dental and medical histories for patients to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The dental and medical histories received by the SDC-affiliated doctors are provided by the patients. SDC-affiliated doctors use the dental and medical histories to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after their SDC-affiliated doctor has reviewed the patient's dental and medical information.

181. Fifth, SDC-affiliated doctors receive pictures of a patient's teeth, gums, and mouth to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The pictures are provided either directly by the patient, by the patient's regular dentist, or by a SmileShop employee gathering the information from the patient. SDC-affiliated doctors use the pictures to evaluate, diagnose, and

treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's pictures.

182. Sixth, SDC-affiliated doctors receive 3D images of a patient's teeth and gums to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The 3D image is generated either by their regular dentist's office, a SmileShop employee gathering information from the patient, or by a technician based on an impression provided by the patient or the patient's regular dentist. The 3D image provides the SDC-affiliated doctor with a better view of a patient's teeth and mouth than a brick-and-mortar doctor can view. SDC-affiliated doctors use the 3D image to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's 3D image.

183. Seventh, SDC-affiliated doctors review the patient's questionnaire, including the desired outcome, to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The patient's desired outcome informs the SDC-affiliated doctor of the patient's dental concerns and expectations from clear aligner therapy. SDC-affiliated doctors use the patient questionnaire to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's questionnaire.

184. Eighth, after receiving the information identified above, SDC-affiliated doctors can (and do) request additional information and/or clearances from patients if they determine that the information initially provided is not sufficient to make a determination regarding whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best

suites for the patient. For example, SDC-affiliated doctors can (and do) request that patients obtain x-rays if the doctor determines that information is necessary to determine whether a patient is a candidate for clear aligner therapy and the treatment plan best suited for the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has determined that he or she does not need any additional information and/or clearances from the patient.

185. Ninth, SDC-affiliated doctors prepare a customized treatment plan for each patient based on all the information provided to and reviewed by the SDC-affiliated doctor. SDC-affiliated doctors review recommended, customized draft treatment plans that are prepared by highly trained lab technicians who are overseen by a group of approximately 60 licensed dentists and orthodontists as an additional quality control measure. SDC-affiliated doctors then reject, modify, or approve the treatment plan based on their review of the information provided about the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed, modified as necessary, and approved a treatment plan for the patient that is best suited to achieving the patient's desired outcome.

186. Tenth, SDC-affiliated doctors monitor their patients' treatment after they have begun using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors monitor treatment by, among other things, reviewing updated photographs posted by the patient to SDC's platform at least every 90 days and reviewing a questionnaire. SDC-affiliated doctors review the updated photographs and questionnaire to determine whether the patient's treatment and teeth movement is progressing as anticipated pursuant to the treatment plan. SDC-affiliated doctors inform patients to terminate or alter their treatment if the photographs or

questionnaire identify any problems or concerns with the treatment or they modify the treatment plan if the patient states that she has concerns or is otherwise not pleased with the treatment.

187. Finally, SDC-affiliated doctors respond to questions and concerns raised by patients after they have begun treatment using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors respond to questions and concerns raised by patients by (a) arranging for a dental hygienist or dental assistant to be available to patients to answer any questions over the phone, chat, text, or communicated through email via SDC's platform on a 24/7 basis; (b) responding to email communications from patients regarding their treatment; (c) speaking with patients over the phone regarding their treatment; and (d) seeing the patient in person if that is geographically feasible and desired by the patient. Patients can (and do) communicate with their SDC-affiliated doctor using various tools regarding any concerns they may have regarding their treatment.

I. NBC made false and misleading statements regarding the involvement of SDC-affiliated doctors in the treatment of patients using SDC's platform.

188. In its Reports and comments, NBC falsely stated and implied that SDC-affiliated doctors were not involved in the treatment of patients using SDC's platform. NBC made the following statements that fall into this category:

- a. "While SmileDirectClub, the **largest at-home dental alignment company**, and others promise to leave patients smiling, an NBC News investigation into a growing list of complaints found that this new trend in straightening teeth is leading to painful problems for some people." (Ex. 1, NBC Online Report at 2 (emphasis added).)
- b. "The **at-home kits** offer to straighten teeth for a fraction of the cost of braces. But is it worth it?" (Ex. 1, NBC Online Report at 1 (emphasis added).)
- c. "SmileDirectClub told [Female Patient] the treatment would be reviewed remotely by one of its 250 dentists and orthodontists. **All of her care was done online, she said.**" (Ex. 1, NBC Online Report at 1 (emphasis added).)

- d. “[Female Patient had] been assured that she’d be able to get in touch with her assigned dentist, but after multiple attempts, she said she was never connected, nor given contact information.” (Ex. 1, NBC Online Report at 2.)
- e. Holt: “Now to our NBC News investigation and a look at a new trend in teeth straightening for much less than the cost of traditional braces. But some patients complain these **at-home treatments** do not leave them smiling.” (Ex. 3, NBC Broadcast Tr. at 2:1–5 (emphasis added).)
- f. Nguyen: “The ads promise to straighten your teeth in six months on average, for under two grand. **Get a scan in the store or kit through the mail, do the rest from home.**” (Ex. 3, NBC Broadcast Tr. at 2:8–17 (emphasis added).)
- g. Nguyen: “[Female Patient] ordered a kit and took an impression of her teeth.” [Female Patient]: “They would have you take the two different putties and mix them all together and then put it in your mouth.” Nguyen: “**A few weeks later, she received dental aligners** and followed the instructions to send in photos of her mouth every 90 days.” (Ex. 3, NBC Broadcast Tr. at 2:21–3:4 (emphasis added).)
- h. NBC Nightly News: “SmileDirectClub, **the largest at-home dental alignment company**, promises to leave patients smiling. But an @NBCNews investigation found that some customers have reported painful problems, which the company says are caused by misuse.” (Ex. 2, Tweet at 2 (emphasis added).)

189. NBC’s intent in making these statements was to convey to viewers and readers, among other things, that patients who need treatment for mild to moderate malocclusion should not seek treatment through SDC, should not seek treatment using SDC’s teledentistry platform, and should not seek treatment using aligners manufactured by SDC pursuant to a doctor’s prescription.

190. NBC’s statements ignoring the continuous involvement of the SDC-affiliated doctors in the treatment of patients using SDC’s platform were (a) factually inaccurate, (b) misleading because NBC did not disclose facts about SDC and the treatment provided by SDC-affiliated doctors, and/or (c) misleading because NBC did not provide proper context for the statement. NBC’s statements were factually inaccurate and/or misleading for eleven reasons.

191. First and foremost, NBC intentionally omitted from its Reports that SDC-affiliated doctors are responsible for, oversee, and participate in every clinical step of patient treatment. SDC-affiliated doctors using SDC's platform: receive the necessary information or clearances that they request regarding patients before their treatment begins to ensure they are an appropriate candidate for treatment by clear aligner therapy using a teledentistry platform; review, modify, reject, or approve the customized treatment plans before prescribing them and prescribing them to be manufactured for a patient before they receive their clear aligners; continually monitor treatment after patients receive their aligners at least every 90 days; and, with Dental Team members made up of dental hygienists and dental assistants, consult with patients after they begin their clear aligner therapy. By omitting these facts from its Reports, NBC created a materially misleading impression that SDC-affiliated doctors are not involved in the treatment of patients.

192. Second, SDC is not a dental alignment company. SDC is an oral care company that offers, among other products and services, a med-tech platform to enable dentists and orthodontists to treat patients with mild to moderate malocclusions with clear aligner therapy using a teledentistry platform. SDC is hired by professional corporations and their affiliated dentists and orthodontists to provide a variety of services, including accounting, billing and collections, customer service, and the sourcing of supplies. NBC's description of SDC as a dental alignment company suggests that SDC, as opposed to the SDC-affiliated doctors, is responsible for straightening a patient's teeth.

193. Third, SDC-affiliated doctors oversee every step of the treatment of patients. SDC-affiliated doctors have full discretion over: the determination of whether a patient is a candidate for clear aligner therapy using a teledentistry platform; the information needed to diagnose a patient; the modification, finalization, and approval of a treatment plan for the patient; monitoring

a patient during the treatment period; adjusting a treatment plan during the treatment period; and requesting that a patient obtain additional information and/or clearances about her teeth and oral health before, during, and after treatment.

194. Fourth, SDC-affiliated doctors receive dental and medical histories from patients to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The dental and medical histories received by the SDC-affiliated doctors are provided by the patients. SDC-affiliated doctors use the dental and medical histories to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after their SDC-affiliated doctor has reviewed the patient's dental and medical information.

195. Fifth, SDC-affiliated doctors receive pictures of a patient's teeth, gums, and mouth to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The pictures are provided either directly by the patient, by the patient's regular dentist, or by a SmileShop employee gathering the information from the patient. SDC-affiliated doctors use the pictures to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's pictures.

196. Sixth, SDC-affiliated doctors receive 3D images of a patient's teeth and gums to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The 3D image is generated either by their regular dentist's office, a SmileShop employee gathering information from the patient, or by a technician based on an impression provided by the patient or the patient's regular dentist. The 3D image provides the SDC-affiliated doctor with a better view of a patient's teeth and mouth than

a brick-and-mortar doctor can view. SDC-affiliated doctors use the 3D image to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's 3D image.

197. Seventh, SDC-affiliated doctors review the patient's questionnaire, including desired outcome, to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The patient's desired outcome informs the SDC-affiliated doctor of the patient's dental concerns and expectations from clear aligner therapy. SDC-affiliated doctors use the patient questionnaire to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's questionnaire.

198. Eighth, after receiving the information identified above, SDC-affiliated doctors can (and do) request additional information and/or clearances from patients if they determine the information initially provided is not sufficient to make a determination regarding whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. For example, SDC-affiliated doctors can (and do) request that patients obtain x-rays if the doctor determines that information is necessary to determine whether a patient is a candidate for clear aligner therapy and the treatment plan best suited for the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has determined that he or she does not need any additional information and/or clearances from the patient.

199. Ninth, SDC-affiliated doctors prepare a customized treatment plan for each patient based on all the information provided to and reviewed by the SDC-affiliated doctor. SDC-

affiliated doctors review recommended, customized draft treatment plans that are prepared by highly trained lab technicians who are overseen by a group of approximately 60 licensed dentists and orthodontists as an additional quality control measure. SDC-affiliated doctors then reject, modify, or approve the treatment plan based on their review of the information provided about the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed, modified as necessary, and approved a treatment plan for the patient that is best suited to achieving the patient's desired outcome.

200. Tenth, SDC-affiliated doctors monitor their patients' treatment after they have begun using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors monitor treatment by, among other things, reviewing updated photographs posted by the patient to SDC's platform at least every 90 days and reviewing a questionnaire. SDC-affiliated doctors review the updated photographs and questionnaire to determine whether the patient's treatment and teeth movement is progressing as anticipated pursuant to the treatment plan. SDC-affiliated doctors instruct patients to terminate or alter their treatment if the photographs or questionnaire identify any problems or concerns with the treatment or they modify the treatment plan if the patient states that she has concerns or is otherwise not pleased with the treatment.

201. Finally, SDC-affiliated doctors respond to questions and concerns raised by patients after they have begun treatment using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors respond to questions and concerns raised by patients by (a) arranging for a dental hygienist or dental assistant to be available to patients to answer any questions over the phone, chat, text, or communicated through email via SDC's platform on a 24/7 basis; (b) responding to email communications from patients regarding their treatment; (c) speaking with patients over the phone regarding their treatment; and (d) seeing the patient in person

if that is geographically feasible and desired by the patient. Patients can (and do) communicate with their SDC-affiliated doctor using various tools regarding any concerns they may have regarding their treatment.

V. NBC'S REPORTS IMPLIED FALSE FACTS ABOUT SMILEDIRECTCLUB

202. The Reports included dozens of false and misleading statements, discussed above. These statements, standing alone, were false and misleading because they (a) misrepresented facts, (b) omitted material facts necessary to make the statement not misleading, or (c) both. In addition to these false and misleading statements, the Reports included four factually inaccurate and defamatory implications regarding SDC and the treatment provided to patients through SDC's platform.

A. NBC falsely implied that treatment through SDC's platform is not safe for patients.

203. One of the main messages of the Reports is that treatment through SDC's platform is not safe for patients. NBC intended for its Reports to make this implication; and, its intent was manifested by the statements it decided to include in the Reports, the facts it decided to exclude from the Reports, and the juxtaposition of information and statements in the Reports. In particular, the broadcast made this implication based on the way NBC presented or selectively edited the information, the images and video that NBC used, and Ms. Nguyen's warning-like tone and tenor. The tone, tenor, and gist of the Reports was selected by NBC to convey to viewers and readers that treatment through SDC's platform is not safe for patients.

1. NBC implied that treatment through SDC's platform is not safe for patients.

204. NBC implied that treatment through SDC's platform is not safe for patients through a variety of false and misleading statements.

205. First, NBC made false and misleading statements that treatment through SDC's platform causes health and physical problems. (*Supra* ¶¶ 86–98.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, the treatment caused health and physical problems.

206. Second, NBC made false and misleading statements that treatment through SDC's platform causes permanent injuries. (*Supra* ¶¶ 99–114.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, the treatment can cause permanent injuries to patients.

207. Third, NBC made false and misleading statements regarding the thoroughness and extensiveness of treatment patients receive through SDC's platform. (*Supra* ¶¶ 115–128.) These false and misleading statements implied that the treatment patients receive is not safe because NBC omitted the steps taken by SDC and the SDC-affiliated doctors who use SDC's platform to ensure that treatment is safe.

208. Fourth, NBC made false and misleading statements regarding the treatment received by Female Patient. (*Supra* ¶¶ 129–140.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, the treatment caused Female Patient's alleged injuries.

209. Fifth, NBC made false and misleading statements regarding the treatment received by Male Patient. (*Supra* ¶¶ 141–150.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, the treatment caused Male Patient's alleged injuries.

210. Sixth, NBC made false and misleading statements regarding patients needing to be protected from treatment through SDC's platform. (*Supra* ¶¶ 151–161.) These false and

misleading statements implied that the treatment patients receive is not safe because, according to NBC, patients need federal agencies and state governments to protect them from the treatment.

211. Seventh, NBC made false and misleading statements regarding treatment through SDC's platform violating federal and state law governing the practice of dentistry. (*Supra* ¶¶ 162–173.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, the treatment does not comply with federal and state law governing the practice of dentistry.

212. Eighth, NBC made false and misleading statements regarding patients using SDC's platform engaging in “do it yourself” dentistry. (*Supra* ¶¶ 174–187.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, patients, who are not doctors, are administering their own treatment.

213. Ninth, NBC made false and misleading statements regarding the absence of doctor involvement in the treatment of patients using SDC's platform. (*Supra* ¶¶ 188–201.) These false and misleading statements implied that the treatment patients receive is not safe because, according to NBC, doctors are not involved in, and do not oversee, the treatment.

2. Individuals who viewed and read the Reports understood the Reports conveyed that treatment through SDC's platform is not safe for patients.

214. The Reports were viewed and read by hundreds of thousands, if not millions, of individuals, including current, future, and past patients, SDC's investors, and members of NBC-affiliated news organizations and other news organizations. Individuals who viewed and read the Reports understood that the Reports conveyed that treatment through SDC's platform is not safe for patients.

215. NBC disseminated the Reports to its affiliates and encouraged them to re-broadcast the Reports on their local news programs. Local NBC anchors who introduced and commented

on the Reports made statements demonstrating that they understood the Reports conveyed that SDC’s platform is not safe for patients. For example, local NBC anchors made the following statements based on and about the Reports:

- a. Anchor: “I don’t know what to think about that one, **sounds a little risky to me.**” *KSN Hometown News - Living Well* (NBC television broadcast Feb. 18, 2020) (emphasis added).
- b. Anchor: “Many complained about customer service but also about just damage to their teeth. The process all done remotely. You don’t see an orthodontist in person. One orthodontist says not getting an in-person checkup can lead to **permanent damage.** . . . Nine Congressman also asked the FDA and FTC to investigate that company.” *41 Action News Today* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- c. Anchor 1: “Well a company promising to straighten teeth for less than the cost of traditional braces is facing hundreds of complaints.” Anchor 2: “[T]he company is SmileDirectClub. They send you a kit in the mail, and you do your own treatments, but it may not be that easy. NBC News found a growing list of people who claim the SmileDirectClub treatments are **causing them painful problems.** . . . And now lawmakers are weighing in. California has become the first state requiring that a dentist has to review an x-ray . . . before a patient can start the treatment.” *WXII 12 News* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- d. Anchor: “A product that is supposed to help you smile is actually making people do the opposite. **SmileDirectClub aligners are causing people neck and jaw pain, as well as horrific migraines.**” *WTHR Eyewitness News* (NBC television broadcast Feb. 14, 2020) (emphasis added).

216. NBC understood that the Reports would be republished by other news organizations; and, on information and belief, NBC took steps to encourage and promote other news organizations to republish and further disseminate the Reports. Other news organizations that viewed and read the Reports understood the Reports conveyed that treatment through SDC’s platform is not safe for patients. For example, other news organizations made the following statements based on and about the Reports:

- a. Anchor: “SmileDirectClub isn’t smiling after a **damning expose by NBC** calling into question how **medically sound** the company’s teeth

straightening services is.” Spectrum News 1 - Market Watch (Feb. 15, 2020) (emphasis added).

- b. Host: “. . . broken teeth, **insane amounts of pain**, and nerve damage because of the product, . . . huh . . . do-it-yourself dentistry, you say . . . **who knew that DIY dentistry might not be a great idea?** . . . It should go without saying that you should be seeing a real, actual dentist in person if you want legit, healthy results. . . . That sucks, **but that’s what you get for going DIY for dentists**, man.” *The Woody Show* (KTHR Wichita radio broadcast on or around Feb. 14, 2020) (emphasis added).
- c. Article Title: “USA Today - **Is SmileDirectClub safe?** Teeth straightening service slams NBC report on ‘painful problems.’” Nathan Bomey, *Is SmileDirectClub safe? Teeth straightening service slams NBC report on ‘painful problems’*, USA TODAY (Feb. 14, 2020, 8:47 AM) (emphasis added).
- d. “**The report called into question the safety** of SmileDirectClub’s tooth aligners.” *The First Trade*, YAHOO! FINANCE (Feb. 18, 2020) (emphasis added).

217. Current, former, and potential patients using SDC’s platform for the treatment of their mild to moderate malocclusion viewed and read the Reports as well as the republication of the Reports by NBC’s affiliates and other news organizations. Current, former, and potential patients understood that the Reports conveyed that treatment through SDC’s platform is not safe.⁵

For example:

- a. “On the news last night[, there was a story] about over 2000 BBB complaints about painful [side effects] or issues.”
- b. “Before I refer my friend, [I]ast night on the news they had people unhappy with [SDC], and [those people said that SDC] ruined their teeth.”
- c. “It was the article from NBC that SDC is under investigation [and that] there have been complaint[s] about aligners making people[’s] teeth fall [out].”

⁵ Comments and excerpts of comments appear as reflected in the original source material with bracketed corrections for spelling and clarity where appropriate. Commenters’ personally identifying information, such as usernames, have been omitted from this Complaint in the interest of protecting their privacy. Should the Court or any parties to this litigation require that information, SDC will provide it in a manner that would maintain the privacy of third parties to this action.

- d. “It was in the NBC news [story], saying that [SDC] is not proper[.] . . . I want my money back.”

218. Other individuals who viewed and read the Reports also understood that the Reports conveyed that treatment through SDC’s platform is not safe for patients. For example, they stated:

- a. **“NBC isn’t wrong. These products can be dangerous.** There’s a reason you are supposed to see a doctor regularly with braces, though health-care costs are another issue entirely.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020) (emphasis added).
- b. “Any direct mail orthodontic treatment without seeing a licensed professional is **potentially dangerous**. You need only see the thousands of patients who have been harmed by this half baked scheme of at home over the counter orthodontic treatment. Fortunately states are stepping in to pass legislation against it. If you own stock in these companies sell it now. Their days are numbered.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020) (emphasis added).
- c. “This applies to any cosmetic ‘medical’ or ‘surgical’ treatments and unproven / unregulated treatments like stem cells – when there is a great deal of money to be made in an unregulated service, you better bet there will be some unsavory characters out there to make a quick dollar. To blow the top [off] **of potentially unsafe companies**, you generally have to start paying attention to the bad outcomes to sift through all the noise about ‘it worked for me’ or marketing bots or Russian trolls. Listen to the podcast Bad Batch regarding the stem cell world – if that doesn’t make you skeptical regarding companies like SDC or other unregulated treatments, then [I] can’t help you there.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020) (emphasis added).
- d. “Personal anecdotes **don’t make these things safe.**” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020) (emphasis added).
- e. “Beware: <http://www.youtube.com/watch?v=Ogbo9Ny> . . . Thank you for shining a bright light on this company and **its complete disregard for people’s welfare.**” TWITTER, (Feb. 15, 2020, 5:36 AM) (emphasis added).
- f. “My aligners come in on Monday and this made my girlfriend pretty concerned for me.” Comment, REDDIT (Feb. 13, 2020, 6:01 PM PST).

- g. “If anything SDC is funding dental practices, so why would dentists go out of their way to shut it down? **FOR PATIENT SAFETY OF COURSE.** We actually CARE about people maintaining their teeth! This company has garbage values and is **putting people in harms way.**” Comment, FACEBOOK (Feb. 19, 2020) (emphasis added).
- h. “Literally how people fall for this nonsense is beyond me! **YOU ARE TRYING TO MOVE BONE, it’s not cheap, or safe** without a pro.” Comment, FACEBOOK (Feb. 20, 2020) (emphasis added).

219. Comments and statements made by individuals who viewed and read the Reports support the conclusion that the Reports conveyed that the treatment through SDC’s platform is not safe for patients. These individuals made the above comments and statements because the gist and overall message of the Reports was that the treatment is not safe for patients.

3. NBC’s implication about the safety of treatment through SDC’s platform is false.

220. NBC’s implication regarding the safety of treatment through SDC’s platform was factually inaccurate for multiple reasons. First and foremost, treatment by SDC-affiliated doctors using SDC’s platform is safe. The absolute and relative safety of treatment of mild to moderate malocclusion using SDC’s platform is the best (or among the very best) of any manner of treatment for this type of malocclusion.

221. Second, the evaluation and treatment protocols followed by SDC-affiliated doctors using SDC’s teledentistry platform prevent (and are designed to prevent) patients from being treated if their treatment will cause harm. SDC-affiliated doctors using the SDC teledentistry platform do not approve patients for treatment using SDC’s platform if they believe, in their clinical judgment—no different than if they were treating the patient in their physical office—that the treatment will cause harm.

222. Third, the monitoring and consultation protocols followed by SDC-affiliated doctors using the SDC teledentistry platform ensure (and are designed to ensure) that treatment is

safe—the same as if they were treating the patient in their physical office. Patients are required to provide updated information for their SDC-affiliated doctors to review. Patients are also provided tools they can use to contact their SDC-affiliated doctor and Dental Team with any concerns or problems. In fact, when using SDC’s platform, patients have access to the SDC-affiliated doctor’s Dental Team on a 24/7 basis, as opposed to the limited office hours of a traditional brick-and-mortar office.

223. Fourth, SDC-affiliated doctors can (and do) adjust treatment plans and/or advise in-office treatment for patients to ensure treatment is safe. The treatment plan originally developed for a patient can be (and is) adjusted if necessary or addressed with an in-office procedure. Just like in a traditional setting, the SDC-affiliated doctor is responsible for managing the care for their patient, including when treatment does not go as expected.

224. Fifth, SDC-affiliated doctors using SDC’s platform receive information from the patient before initiating treatment to confirm that the patient does not have existing health or physical problems that could be exacerbated as a result of treatment using SDC’s platform or clear aligners supplied by SDC. Among other things, patients provide health and medical information for the SDC-affiliated doctor to review as part of the SDC-affiliated doctor’s assessment of whether the patient is a candidate for treatment. SDC-affiliated doctors review this information prior to approving a treatment plan for each patient and can (and do) require additional information and/or clearances, if necessary.

225. Sixth, treatment by SDC-affiliated doctors using SDC’s platform to provide clear aligner therapy is less risky for patients than treatment by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC’s platform to provide clear aligner therapy for cases of mild to moderate malocclusion. The risks to oral health associated with the treatment of mild to moderate

malocclusions with clear aligners are less than those associated with the comprehensive treatment of more severe malocclusion by brick-and-mortar doctors using braces. Patients treated by SDC-affiliated doctors using SDC's platform for the provision of clear aligner therapy experience fewer problems than patients treated by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform for providing clear aligner therapy for mild to moderate malocclusion, which results in minimal movement of the teeth over an extended period of time. This type of treatment is less prone to cause the type of hard- and soft-tissue damage seen in the treatment of more complex malocclusions by brick-and-mortar doctors using braces.

226. Seventh, the satisfaction and success rate for patients who are treated by SDC-affiliated doctors using SDC's platform is high. SDC's overall score by the BBB is A+, the highest available rating. At the time of the Reports, the number of issues raised with the BBB by patients treated using SDC's platform, including non-clinical issues, was less than 0.2%. The number of issues raised with the BBB—by patients or non-patients (*i.e.*, people pretending to be patients)—regarding clinical issues was a small percentage of that infinitesimally small percentage, less than 0.001%.

227. Eighth, on information and belief, many individuals who claim to have experienced issues as a result of their treatment by SDC-affiliated doctors using SDC's platform did not follow protocol during their treatment. However, given SDC's track record of satisfied customers, individuals who claim to have experienced issues as a result of their treatment by an SDC-affiliated doctor were: (a) not actually treated using SDC's platform; (b) did not follow instructions or guidance provided during their treatment; (c) terminated their treatment prematurely; and/or (d) provided inaccurate information to their SDC-affiliated doctor.

228. Ninth, on information and belief, individuals who claim that the treatment by their SDC-affiliated doctor using SDC's platform is not safe have a financial interest in preventing the growth of teledentistry, generally, and SDC, in particular. SDC has come under attack by several dental trade organizations and associations made up of market participants who seek to prevent patients from having the choice to receive treatment outside of a traditional brick-and-mortar office. Those dental trade organizations and associations have published defamatory and disparaging statements regarding SDC and treatment by SDC-affiliated doctors.

B. NBC falsely implied that patients who are using SDC's platform are engaged in "do it yourself" dentistry.

229. One of the main messages of the Reports is that patients who are using SDC's platform are engaged in "do it yourself" dentistry. NBC intended for its Reports to make this implication; and, its intent was manifested by the statements it decided to include in the Reports, the facts it decided to exclude from the Reports, and the juxtaposition of information and statements in the Reports. In particular, the broadcast made this implication based on the way NBC presented or selectively edited the information, the images and video that NBC used, and Ms. Nguyen's warning-like tone and tenor. The tone, tenor, and gist of the Reports was selected by NBC to convey to viewers and readers that patients who are using SDC's platform are engaged in "do it yourself" dentistry.

1. NBC implied that treatment through SDC's platform is "do it yourself" dentistry.

230. NBC implied that patients who are using SDC's platform are engaged in "do it yourself" dentistry; that is, treating their mild to moderate malocclusion without the involvement and oversight of a licensed dentist or orthodontist. NBC made this implication through a variety of false and misleading statements.

231. First, NBC made false and misleading statements regarding treatment through SDC's platform causing health and physical problems for unidentified patients. (*Supra* ¶¶ 86–98.) These false and misleading statements implied that patients using SDC's platform are engaged in “do it yourself” dentistry because viewers and readers are left with the impression that the alleged health and physical problems were caused by a lack of doctor involvement.

232. Second, NBC made false and misleading statements regarding treatment through SDC's platform causing permanent injuries. (*Supra* ¶¶ 99–114.) These false and misleading statements implied that patients using SDC's platform are engaged in “do it yourself” dentistry because viewers and readers are left with the impression that the alleged permanent injuries were caused by a lack of doctor involvement.

233. Third, NBC made false and misleading statements regarding the thoroughness and extensiveness of treatment patients receive through SDC's platform. (*Supra* ¶¶ 115–128.) These false and misleading statements implied that patients using SDC's platform are engaged in “do it yourself” dentistry because NBC omitted information regarding the involvement of SDC-affiliated doctors in patient treatment.

234. Fourth, NBC made false and misleading statements regarding the treatment received by Female Patient. (*Supra* ¶¶ 129–140.) These false and misleading statements implied that patients using SDC's platform are engaged in “do it yourself” dentistry because NBC omitted information regarding the involvement of her SDC-affiliated doctor in her treatment.

235. Fifth, NBC made false and misleading statements regarding the treatment received by Male Patient. (*Supra* ¶¶ 141–150.) These false and misleading statements implied that patients using SDC's platform are engaged in “do it yourself” dentistry because NBC omitted information regarding the involvement of his SDC-affiliated doctor in his treatment.

236. Sixth, NBC made false and misleading statements regarding patients needing to be protected from treatment through SDC’s platform. (*Supra* ¶¶ 151–161.) These false and misleading statements implied that patients using SDC’s platform are engaged in “do it yourself” dentistry because viewers and readers were left with the impression that the absence of doctor involvement is what necessitates the protection.

237. Seventh, NBC made false and misleading statements regarding treatment through SDC’s platform violating federal and state law governing the practice of dentistry. (*Supra* ¶¶ 162–173.) These false and misleading statements implied that patients using SDC’s platform are engaged in “do it yourself” dentistry because viewers and readers were left with the impression that the absence of doctor involvement is what violates federal and state law.

2. Individuals who viewed and read the Reports understood the Reports conveyed that patients using SDC’s platform are engaged in “do it yourself” dentistry.

238. The Reports were viewed and read by hundreds of thousands, if not millions, of individuals, including current, future, and past patients, SDC’s investors, and members of NBC-affiliated news organizations and other news organizations. Individuals who viewed and read the Reports understood that the Reports conveyed that patients using SDC’s platform are engaged in “do it yourself” dentistry.

239. NBC disseminated the Reports to its affiliates and encouraged them to re-broadcast the Reports on their local news programs. Local NBC anchors who introduced and commented on the Reports made statements demonstrating that they understood the Reports conveyed that patients using SDC’s platform are engaged in “do it yourself” dentistry. For example, local NBC anchors made the following statements based on and about the Reports:

- a. Anchor 1: “I think this is one of those rare examples where if you want something done right, **don’t do it yourself.**” Anchor 2: “That’s a **tough DIY** for sure . . . you definitely [have] to check in with the dentist as much

as possible when you are shifting your teeth.” Anchor 1: “[Y]ou are actually changing, like, bone structure in your body, so, [it is] important to check in with a doctor there.” *12 News Health* (NBC television broadcast Feb. 14, 2020) (emphasis added).

- b. Anchor: “An NBC News investigation found a growing number of customers [who] say the **at-home tooth-straightening treatments** didn’t leave them smiling.” *TMJ4 News Today* (NBC television broadcast Feb. 14, 2020) (emphasis added).

240. NBC understood that the Reports would be republished by other news organizations; and, on information and belief, NBC took steps to encourage and promote other news organizations to republish and further disseminate the Reports. Other news organizations that viewed and read the Reports understood the Reports conveyed that patients using SDC’s platform are engaged in “do it yourself” dentistry. For example, other news organizations made the following statements based on and about the Reports:

- a. Host: “[B]roken teeth, insane amounts of pain, and nerve damage because of the product . . . **do-it-yourself dentistry**, you say . . . who knew that **DIY dentistry** might not be a great idea? . . . It should go without saying that you should be seeing a real, actual dentist in person if you want legit, healthy results . . . That sucks, but that’s what you get for going DIY for dentists, man.” *The Woody Show* (KTHR Wichita radio broadcast on or about Feb. 14, 2020) (emphasis added).
- b. “Smile Direct Club has been ruffling feathers ever since they’ve opened their doors. Dentists and orthodontists, in particular, are outraged by the idea of affordable, **do-it-yourself braces**.” Jack Giroux, *SmileDirectClub is Pissed at NBC*, GRITDAILY (Feb. 17, 2020) (emphasis added).
- c. “Dentists and orthodontists, in particular, are outraged by the idea of affordable, **do-it-yourself braces**. Most recently, NBC took aim at SmileDirectClub with an investigative report causing the company’s stock to drop significantly. Orthodontists everywhere, as a result, rejoiced.” Jonita Singh, *SmileDirectClub is Pissed After NBC Publishes Investigative Report*, WINKREPORT (Feb. 18, 2020) (emphasis added).
- d. “The service (Smile Direct Club) has drawn criticism from the American Association of Orthodontists, or AAO, which filed complaints against SmileDirectClub in dozens of states, saying the **company’s do-it-yourself model** violates dental-practice laws.” Nathan Bomey, *Is SmileDirectClub*

safe? Teeth straightening service slams NBC report on ‘painful problems,’
USA TODAY (Feb. 14, 2020) (emphasis added).

- e. Anchor: “Straightening your teeth at home with the money-saving kit could end up costing you even more. Dentists say people are having to come in for corrective [treatment] after using the **at-home service, SmileDirectClub.**” *FOX13’s Good Day, Tampa Bay* (FOX television broadcast Feb. 15, 2020) (emphasis added).

241. Other individuals who viewed and/or read the Reports also understood that the Reports conveyed that patients using SDC’s platform are engaged in “do it yourself” dentistry.

For example:

- a. “I have never thought that **do-it-yourself orthodontics** was a good idea. Too many things can go wrong.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report”, YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- b. “Would you build a house, by having a company drop off all the materials and blueprints on your property? SmileDirect is the same proposition, I’m not in the dental field in any capacity, but I’m having invisalign done with an Orthodontist and I can’t imagine doing it any other way.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020).
- c. “Any direct mail orthodontic treatment without seeing a licensed professional is potentially dangerous. You need only see the thousands of patients who have been harmed by this half baked scheme of **at home over the counter orthodontic treatment.** Fortunately states are stepping in to pass legislation against it. If you own stock in these companies sell it now. Their days are numbered.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- d. “**SmileDirectClub=Be Your Own, At Home Orthodontist.** Nope. There’s a reason why no one has ever attempted this before.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- e. “Chief legal officer . . . will say anything. She says the Dentists are responsible when **no dentists are involved.** Smile direct just opened up the technology to dentists months ago just to comply [with] state law. They have no intention of using dentists. **That’s the idea behind do it yourself.** Another lawyer with no conscience.” Comment to “SmileDirectClub down

5% premarket on reported aligner problems,” SEEKING ALPHA (Feb. 14, 2020 8:21 AM) (emphasis added).

- f. “In case nobody noticed moving your teeth from one spot to another is a medical/dental procedure. If not done correctly you can lose bone around your teeth and they will [be] loose permanently. **Would you do your own eye surgery?** I never could understand why anybody would do this without dental supervision. There is danger and SmileDirect will [be] sued for plenty once the bad results start to appear. Dentistry is a risky procedure like any other thing that is done to your body.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- g. “**Mail order orthodontics?** What could possibly go wrong?” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- h. “I make very little money on my Invisalign cases . . . but you need [doctor] supervision to make sure things are going to plan. I’ve placed the implants on people who have lost teeth from **[at-]home orthodontics**. The people who design them are not dentists and have no knowledge of dentistry. Same with Invisalign and all the aligner companies[;] the difference is with Invisalign[,] a dentist can MONITOR YOU. . . .” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- i. “Do some people have successful results from a **non-physician quality procedure?** Absolutely. Would I personally risk it? Absolutely not.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- j. “Listen, I get it. I understand that **at home aligners** are attractive due to the cost. However, when you do not have someone watching your progress and bite, problems are going to arise. My braces are costing me 7K+ and it’s worth every penny so I can assure that down the road, I do not develop other health issues. As my mom says, if you’re going to do something, do it right the FIRST time. Go to an orthodontist. Don’t mess around with your teeth.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! MONEY (Feb. 16, 2020) (emphasis added).
- k. “Finally something is going to be done[.] This is fraud and moving teeth **[without] the supervision of a dentist or orthodontist** is wrong[.]” Comment, FACEBOOK (Feb. 19, 2020, 12:06 PM) (emphasis added).
- l. “This is going to happen if you will try any treatment online whether it’s dental or medical[.] **Online treatment** is always dangerous[.]” Comment, FACEBOOK (Feb. 23, 2020 7:57 PM) (emphasis added).

- m. “I’d never trust my dental health to an **online service**[.]” Comment, FACEBOOK (Feb. 24, 2020, 10:22 AM) (emphasis added).
- n. “Let me get this straight. You pay almost 2k, for retainers that come thru the mail, **you never see an orthodontist**, you get stuck with the crummy services that can give you an overbite, you can’t fill the back of your teeth, and you can get diseases, just to name a few. Just some of the complaints from consumers. No thanks” Comment, FACEBOOK (Feb. 27, 2020, 8:45 AM) (emphasis added).

242. Comments and statements made by individuals who viewed and read the Reports support the conclusion that the Reports conveyed that patients using SDC’s platform are engaged in “do it yourself” dentistry. These individuals made the above comments and statements because the gist and overall message of the Reports was that patients using SDC’s platform are engaged in “do it yourself” dentistry.

3. NBC’s implication about “do it yourself” dentistry is false.

243. NBC’s implication regarding “do it yourself” dentistry was factually inaccurate for multiple reasons. First and foremost, SDC-affiliated doctors are responsible for all clinical decisions and oversee and participate in every step of patient treatment. SDC-affiliated doctors: using SDC’s platform: receive any and all information and clearances that they deem desirable or necessary information regarding patients before their treatment begins to ensure that they are an appropriate candidate for treatment with clear aligners using a teledentistry platform; oversee and undertake steps to ensure the correct treatment plan is developed for a patient before they prescribe clear aligner therapy and before they prescribe the manufacturing of the clear aligners; monitor treatment after patients receive their aligners throughout treatment with remote check-ins at least every 90 days; and, with Dental Team members made up of dental hygienists and dental assistants, consult with patients after they begin their clear aligner therapy. By omitting these facts from its Reports, NBC created a materially misleading impression that treatment using SDC’s platform is “do it yourself” dentistry, meaning patients are treating themselves without involvement and

oversight by doctors when, in fact, SDC-affiliated doctors are involved the same amount, if not more, than dentists and orthodontists in traditional brick-and-mortar practices.

244. Second, SDC is not a dental alignment company. SDC is an oral care company that offers, among other products and services, a med-tech platform to enable dentists and orthodontists to treat patients with mild to moderate malocclusions with clear aligner therapy using a teledentistry platform. SDC is hired by professional associations/corporations and their affiliated dentists and orthodontists to provide a variety of services, including accounting, billing and collections, customer service, and the sourcing of supplies. NBC's description of SDC as a dental alignment company suggests that SDC, as opposed to the SDC-affiliated doctors, is responsible for straightening a patient's teeth.

245. Third, SDC-affiliated doctors oversee every step of the treatment of patients. SDC-affiliated doctors have full discretion over the determination of whether a patient is a candidate for clear aligner therapy using a teledentistry platform, the information needed to diagnosis a patient, the modification, finalization, and approval of a treatment plan for the patient, monitoring a patient during the treatment period, adjusting a treatment plan during the treatment period, and requesting that a patient obtain additional information and/or clearances about the patient's teeth and oral health before, during, and after treatment.

246. Fourth, SDC-affiliated doctors receive dental and medical histories from patients to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The dental and medical histories received by the SDC-affiliated doctors are provided by the patients. SDC-affiliated doctors use the dental and medical histories to evaluate, diagnose, and treat patients. Patients are not

prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after their SDC-affiliated doctor has reviewed the patient's dental and medical information.

247. Fifth, SDC-affiliated doctors receive pictures of a patient's teeth, gums, and mouth to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The pictures are provided either directly by the patient, by the patient's regular dentist, or by a SmileShop employee gathering the information from the patient. SDC-affiliated doctors use the pictures to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's questionnaire.

248. Sixth, SDC-affiliated doctors receive 3D images of a patient's teeth and gums to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The 3D image is generated either by their regular dentist's office, a SmileShop employee gathering information from the patient, or by a technician based on an impression provided by the patient or the patient's regular dentist. The 3D image provides the SDC-affiliated doctor with a better view of a patient's teeth and mouth than a brick-and-mortar doctor can view. SDC-affiliated doctors use the 3D image to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's 3D image.

249. Seventh, SDC-affiliated doctors review the patient's questionnaire, including desired outcome, to help determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. The patient's desired outcome informs the SDC-affiliated doctor of the patient's dental concerns and expectations from

clear aligner therapy. SDC-affiliated doctors use the patient questionnaire to evaluate, diagnose, and treat patients. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has reviewed the patient's questionnaire.

250. Eighth, after receiving the information identified above, SDC-affiliated doctors can (and do) request additional information and/or clearances from patients if they determine the information provided is not sufficient to determine whether a patient is a candidate for clear aligner therapy using a teledentistry platform and the treatment plan best suited for the patient. For example, SDC-affiliated doctors can (and do) request that patients obtain x-rays if the doctor determines that information is necessary.

251. Ninth, SDC-affiliated doctors prepare a customized treatment plan for each patient based on all the information provided and reviewed by the SDC-affiliated doctor. SDC-affiliated doctors review recommended, customized treatment plans that are prepared by highly trained lab technicians who are overseen by a group of approximately 60 licensed dentists and orthodontists as an additional quality control measure. SDC-affiliated doctors then modify or approve the treatment plan based on their review of the information provided about the patient. Patients are not prescribed clear aligner therapy, do not receive aligners, and do not begin treatment until after an SDC-affiliated doctor has approved a treatment plan for the patient that is best suited to achieving the patient's desired outcome.

252. Tenth, SDC-affiliated doctors monitor their patients' treatment after they have begun using clear aligners supplied by SDC pursuant to the doctor's prescription. SDC-affiliated doctors monitor treatment by, among other things, reviewing updated photographs posted by the patient to SDC's platform at least every 90 days and reviewing a questionnaire. SDC-affiliated doctors review the updated photographs and questionnaire to determine whether the patient's

treatment and teeth movement is progressing as anticipated pursuant to the treatment plan. SDC-affiliated doctors inform patients to terminate or alter their treatment if the photographs or questionnaire identify any problems or concerns with the treatment or they modify the treatment plan if the patient has concerns.

253. Finally, SDC-affiliated doctors respond to questions and concerns raised by patients after they have begun treatment. SDC-affiliated doctors respond to questions by (a) arranging for a dental hygienist or dental assistant to be available to patients to answer any questions over the phone, chat, text, or email communications via SDC's platform on a 24/7 basis, (b) responding to emails from patients regarding their treatment, (c) speaking with patients over the phone regarding their treatment, and (d) seeing the patient in person if that is geographically feasible and desired by the patient. Patients can (and do) communicate with their SDC-affiliated doctor using these various tools.

C. NBC falsely implied that treatment using SDC's platform is not effective for patients.

254. One of the main messages of the Reports is that treatment using SDC's platform is not effective for patients. NBC intended for its Reports to make this implication; and, NBC's intent was manifested by the statements it decided to include in the Reports, the facts NBC decided to exclude from the Reports, and the juxtaposition of information and statements in the Reports. In particular, the broadcast made this implication based on the way NBC presented or selectively edited the information, the images and video that NBC used, and Ms. Nguyen's warning-like tone and tenor. The tone, tenor, and gist of the Reports was selected by NBC to convey to viewers and readers that treatment using SDC's platform is not effective for patients.

1. NBC implied that treatment using SDC's platform is not effective for patients.

255. NBC implied that treatment using SDC's platform is not effective for patients through a variety of false and misleading statements.

256. First, NBC made false and misleading statements that treatment through SDC's platform causes health and physical problems that require further dental treatment. (*Supra* ¶¶ 86–98.)

257. Second, NBC made false and misleading statements that SDC's platform causes permanent injuries that require further dental treatment. (*Supra* ¶¶ 99–114.)

258. Third, NBC made false and misleading statements regarding the thoroughness and extensiveness of treatment patients receive through SDC's platform. (*Supra* ¶¶ 115–128.) These false and misleading statements implied that treatment using SDC's platform is not effective because NBC omitted the steps taken by SDC and the SDC-affiliated doctors who use SDC's platform to ensure that treatment is effective.

259. Fourth, NBC made false and misleading statements regarding the treatment received by Female Patient. (*Supra* ¶¶ 129–140.) These false and misleading statements implied that treatment using SDC's platform is not effective because, according to NBC, the treatment caused Female Patient's alleged injuries and did not correct her dental issues.

260. Fifth, NBC made false and misleading statements regarding the treatment received by Male Patient. (*Supra* ¶¶ 141–150.) These false and misleading statements implied that treatment using SDC's platform is not effective because, according to NBC, the treatment caused Male Patient's alleged injuries and did not correct his dental issues.

261. Sixth, NBC made false and misleading statements that patients need to be protected by state and federal agencies from treatment through SDC's platform. (*Supra* ¶¶ 151–161.)

262. Seventh, NBC made false and misleading statements regarding treatment through SDC's platform violating federal and state law governing the practice of dentistry. (*Supra* ¶¶ 162–173.)

263. Eighth, NBC made false and misleading statements that patients using SDC's platform are engaging in “do it yourself” dentistry and patients, not doctors, are overseeing their own treatment. (*Supra* ¶¶ 174–187.)

264. Ninth, NBC made false and misleading statements regarding the absence of doctor involvement in the treatment of patients using SDC's platform. (*Supra* ¶¶ 188–201.)

2. Individuals who viewed and read the Reports understood the Reports conveyed that treatment using SDC's platform is not effective for patients.

265. The Reports were viewed and read by hundreds of thousands, if not millions, of individuals, including current, future, and past patients, SDC's investors, and members of NBC-affiliated news organizations and other news organizations. Individuals who viewed and read the Reports understood the Reports conveyed that treatment using SDC's platform is not effective for patients.

266. NBC disseminated the Reports to its affiliates and encouraged them to re-broadcast the Reports on their local news programs. Local NBC anchors who introduced and commented on the Reports made statements demonstrating that they understood the Reports conveyed that treatment using SDC's platform is not effective for patients. For example, local NBC anchors made the following statements based on and about the Reports:

- a. Anchor: “[We] look at a new trend in teeth straightening for much less than the cost of traditional braces, but some patients complain **these at-home treatments don't leave them smiling.**” *KSN Hometown News - Living Well* (NBC television broadcast Feb. 14, 2020); *11 Alive Weekend Mornings* (NBC television broadcast Feb. 15, 2020) (emphasis added).

- b. Anchor: “I don’t know what to think about that one, sounds a little risky to me.” *KSN Hometown News - Living Well* (NBC television broadcast Feb. 18, 2020).
- c. Anchor: “Well now some patients are complaining that SmileDirectClub **doesn’t live up to expectations and even leaves them in pain.**” *KING 5 Early Morning News* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- d. Anchor: “Many complained about customer service but also about just damage to their teeth. The process all done remotely. You don’t see an orthodontist in person. **One orthodontist says not getting an in-person checkup can lead to permanent damage.** . . . Nine Congressman also asked the FDA and FTC to investigate that company.” *41 Action News Today* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- e. Anchor: “SmileDirectClub is leaving many customers frowning. Customers are saying the aligners prescribed by the online dental company are **doing more harm than good.** More than 1,800 complaints have been filed with the Better Business Bureau about the company. Doctors say that **moving teeth without in-person supervision can lead to permanent harm.**” *KARE 11 News at Sunrise* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- f. Anchor: “An NBC News investigation found a growing number of customers say the **at-home teeth straighteners did not leave them smiling.** . . . For example, [Female Patient] was diagnosed with a cross bite, possibly caused by the aligners, which put strain on her neck and jaw muscles and caused migraines. . . . So now nine U.S. congressmen have asked the Food and Drug Administration to investigate SmileDirectClub to “ensure it is not misleading consumers or causing patient harm.” *TMJ4 News Today* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- g. Anchor: “A product that **is supposed to help you smile is actually making people do the opposite.** SmileDirectClub aligners are causing people neck and jaw pain, as well as horrific migraines.” *WTHR Eyewitness News* (NBC television broadcast Feb. 14, 2020) (emphasis added).
- h. Anchor 1: “I think this is one of those rare examples **where if you want something done right, don’t do it yourself.**” Anchor 2: “That’s a tough DIY for sure . . . you definitely got to check in with the dentist as much as possible when you are shifting your teeth.” Anchor 1: “[Y]ou are actually changing, like, bone structure in your body, so, [it is] important to check in with a doctor there.” *12 News Health* (NBC television broadcast Feb. 14, 2020) (emphasis added).

267. NBC understood that the Reports would be republished by other news organizations; and, on information and belief, NBC took steps to encourage and promote other news organizations to republish and further disseminate the Reports. Other news organizations who viewed and read the Reports understood that the Reports conveyed that treatment using SDC's platform is not effective. For example, other news organizations made the following statements based on and about the Reports:

- a. Anchor: "SmileDirectClub isn't smiling after a damning expose by NBC calling into question how medically sound the company's teeth straightening services is." Spectrum News 1 - Market Watch (Feb. 15, 2020).
- b. ". . . broken teeth, insane amounts of pain, and nerve damage because of the product, . . . huh . . . do-it-yourself dentistry, you say . . . who knew that DIY dentistry might not be a great idea? . . . It should go without saying that you should be seeing a real, actual dentist in person if you want legit, healthy results. . . . That sucks, but that's what you get for going DIY for dentists, man." *The Woody Show* (KTHR Wichita radio broadcast on or around Feb. 14, 2020).

268. Current, former, and potential patients using SDC's platform for the treatment of their mild to moderate malocclusion viewed and read the Reports as well as the republication of the Reports by NBC's affiliates and other news organizations. Current, former, and potential patients understood that the Reports conveyed that treatment using SDC's platform is not effective for patients. For example:

- a. "On the news [. . .] people were reporting problems [with SDC] and [that] the aligners aren't doing what they should be doing."
- b. "Before I refer my friend, [I]ast night on the news they had people unhappy with [SDC], and [those people said that SDC] ruined their teeth."
- c. "I saw a review about SDC and the reviews weren't good, so I don't thinking I'm going to continue."
- d. "It was the article from NBC that SDC is under investigation [and that] there have been complaint[s] about aligners making people['s] teeth fall [out]."

- e. “On the news they were saying the aligners could mess you up. This lady on the news was saying that it caused her problems.”
- f. “After all of the negative news coverage I’m concerned about my own treatment plan.”
- g. “Fear from the NBC interview. Not quite sure if this will be worth it. Wish I could cancel and go with someone like Invisalign.”
- h. “Just started week two. Tonight SDC had bad rap on nightly news and my local channel. I don’t know if I should proceed with [the] program.”

269. Other individuals who viewed and/or read the Reports understood that the Reports conveyed that treatment using SDC’s platform is not effective. For example, they stated:

- a. “In case nobody noticed moving your teeth from one spot to another is a medical/dental procedure. If not done correctly you can lose bone around your teeth and they will [be] loose permanently. Would you do your own eye surgery? I never could understand why anybody would do this without dental supervision. There is danger and SmileDirect will b[e] sued for plenty once the bad results start to appear. Dentistry is a risky procedure like any other thing that is done to your body.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
- b. “NBC isn’t wrong. These products can be dangerous. There’s a reason you are supposed to see a doctor regularly with braces, though health-care costs are another issue entirely. Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
- c. “Any direct mail orthodontic treatment without seeing a licensed professional is potentially dangerous. You need only see the thousands of patients who have been harmed by this half baked scheme of at home over the counter orthodontic treatment. Fortunately states are stepping in to pass legislation against it. If you own stock in these companies sell it now. Their days are numbered.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
- d. “I have never thought that do-it-yourself orthodontics was a good idea. Too many things can go wrong.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
- e. “The fraud that is direct-to-consumer teeth straightening (SmileDirect Club, Candid, Smilelove, etc.) is finally getting national attention. You get what you pay for and, unfortunately in the case of DTC aligners, it could include poor results, tooth/jaw pain and even tooth loss. Never trust your healthcare

to an online business. Only entrust your and your children's orthodontic treatment to the one dental professional that is specifically trained in the guidance of growth and alignment of teeth and jaws . . . an ORTHODONTIST!" Comment, FACEBOOK (Feb. 13, 2020).

270. Comments and statements made by individuals who viewed and read the Reports support the conclusion that the Reports conveyed that treatment using SDC's platform is not effective for patients. These individuals made the above comments and statements because the gist and overall message of the Reports was that treatment using SDC's platform is not effective for patients.

3. NBC's implication about the effectiveness of treatment using SDC's platform is false.

271. NBC's implication regarding the effectiveness of treatment through SDC's platform was factually inaccurate for multiple reasons. First and foremost, treatment by SDC-affiliated doctors using SDC's platform is effective. The absolute and relative effectiveness of mild to moderate malocclusion using SDC's platform is the best (or among the very best) of any manner of treatment for this type of malocclusion.

272. Second, the evaluation and treatment protocols followed by SDC-affiliated doctors using SDC's teledentistry platform ensure (and are designed to ensure) the effectiveness of treatment. SDC-affiliated doctors using the SDC teledentistry platform do not approve patients for treatment using SDC's platform if they believe, in their clinical judgment—no different than if they were treating the patient in their physical office—that the treatment will not be effective.

273. Third, the monitoring and consultation protocols followed by SDC-affiliated doctors using the SDC teledentistry platform are to ensure that treatment is effective, the same as if they were treating the patient in their physical office. Patients are required to provide updated information for their SDC-affiliated doctors to review. Patients are also provided tools they can use to contact their SDC-affiliated doctor and Dental Team with any concerns or problems. In

fact, when using SDC's platform, patients have access to the SDC-affiliated doctor's Dental Team that SDC provides on a 24/7 basis, as opposed to the limited office hours of a traditional brick-and-mortar office.

274. Fourth, SDC-affiliated doctors can (and do) adjust treatment plans and/or advise in-office treatment for patients. The treatment plan originally developed for a patient can be (and is) adjusted if necessary and can be addressed with an in-office procedure. Just like in a traditional setting, the SDC-affiliated doctor is responsible for managing the care for their patient, including when treatment does not go as expected.

275. Fifth, SDC-affiliated doctors using SDC's platform receive information from the patient before initiating treatment to confirm that treatment using SDC's platform and clear aligners supplied by SDC will be effective. Among other things, patients provide health and medical information for the SDC-affiliated doctor to review as part of their assessment of whether the patient is a candidate for treatment. SDC-affiliated doctors review this information prior to approving a treatment plan for each patient and can and do require additional information and/or clearances when they, in their clinical judgment, determine such information and/or clearances are necessary.

276. Sixth, treatment by SDC-affiliated doctors using SDC's platform to provide clear aligner therapy is less risky for patients than treatment by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform to provide clear aligner therapy for cases of mild to moderate malocclusion. The risks to oral health associated with the treatment of mild to moderate malocclusions with clear aligners are less than those associated with the comprehensive treatment of more severe malocclusion by brick-and-mortar doctors using braces. Patients treated by SDC-affiliated doctors using SDC's platform for the provision of clear aligner therapy experience fewer

problems than patients treated by brick-and-mortar doctors using braces. SDC-affiliated doctors use SDC's platform for providing clear aligner therapy for mild to moderate malocclusion, which results in minimal movement of the teeth over an extended period of time. This type of treatment is less prone to cause the type of hard- and soft-tissue damage seen in the treatment of more complex malocclusions by brick-and-mortar doctors using braces.

277. Seventh, the satisfaction and success rate for patients who are treated by SDC-affiliated doctors using SDC's platform is high. SDC's overall score by the BBB is A+, the highest available rating. At the time of the Reports, the number of issues raised with the BBB by patients treated using SDC's platform, including non-clinical issues, was less than 0.2%. The number of issues raised with the BBB—by patients or non-patients (*i.e.*, people pretending to be patients)—regarding clinical issues was a small percentage of that infinitesimally small percentage, less than 0.001%.

278. Finally, on information and belief, individuals who claim that the treatment by their SDC-affiliated doctor using SDC's platform is not effective have a financial interest in preventing the growth of teledentistry, generally, and SDC, in particular. SDC has come under attack by several dental trade organizations and associations made up of market participants who seek to prevent patients from having the choice to receive treatment outside of a traditional brick-and-mortar office. The dental trade organizations and associations have published defamatory and disparaging statements regarding SDC and treatment by SDC-affiliated doctors.

D. NBC falsely implied that SDC is a dishonest company.

279. One of the main messages of the Reports is that SDC is a dishonest company that is misleading consumers. NBC intended for its Reports to make this implication; and, NBC's intent was manifested by the statements it decided to include in the Reports, the facts it decided to exclude from the Reports, and the juxtaposition of information and statements in the Reports. In

particular, the broadcast made this implication based on the way NBC presented or selectively edited the information, the images and video that NBC used, and Ms. Nguyen's warning-like tone and tenor. The tone, tenor, and gist of the Reports was selected by NBC to convey to viewers and readers that SDC is a dishonest company that is misleading consumers.

1. NBC implied that SDC is a dishonest company.

280. NBC implied that SDC is a dishonest company that is misleading consumers. It made this implication by (a) stating and implying that treatment through SDC's platform is not safe for patients, (b) stating and implying that patients using SDC's platform are engaged in "do it yourself" dentistry, (c) juxtaposing statements during the Reports to suggest that SDC is lying to consumers about the treatment they receive through SDC's platform, and (d) stating that SDC is engaged in unethical business practices.

281. First, NBC implied that SDC is a dishonest company by stating and implying that treatment through SDC's platform is not safe for patients. (*Supra* ¶¶ 203–228). SDC promotes and publicizes the safety of the treatment that patients receive from SDC-affiliated doctors when using SDC's platform. NBC created the impression that SDC does not care about patient safety, and in fact puts patient safety at risk, as a result of the statements and implications in the Reports. As a result, NBC implied that SDC is misleading consumers when it promotes and publicizes the safety of the treatment that patients receive from SDC-affiliated doctors when using SDC's platform.

282. Second, NBC implied that SDC is a dishonest company by stating and implying that patients using SDC's platform are engaged in "do it yourself" dentistry. (*Supra* ¶¶ 174–187; 229–253). SDC promotes and publicizes the treatment that patients receive through SDC's platform as being doctor directed. NBC created the impression that doctors are not involved in the treatment that patients receive through SDC's platform. As a result, NBC implied that SDC is

misleading consumers when it promotes and publicizes the treatment that patients received through SDC's platform as being doctor directed.

283. Third, NBC implied that SDC is a dishonest company by stating and implying that treatment patients receive using SDC's platform is neither thorough nor effective. (*Supra* ¶¶ 115–128; 254–278). SDC promotes and publicizes the treatment that patients receive through SDC's platform as being as thorough and effective as the treatment received by patients who seek treatment through the traditional brick-and-mortar model. NBC created the impression that the treatment patients receive through SDC's platform is cursory and ineffective, as a result of the statements and implications in the Reports. As a result, NBC implied that SDC is misleading consumers when it promotes and publicizes the thoroughness and effectiveness of the treatment that patients receive from SDC-affiliated doctors using SDC's platform.

284. Fourth, NBC implied that SDC is a dishonest company by juxtaposing statements during the Reports to suggest that SDC is lying to consumers about the treatment they receive through SDC's platform. In the Reports, NBC's juxtaposition took the form of publishing a statement by SDC and then immediately contradicting or undermining the validity of SDC's statement. For example:

- a. **“While** SmileDirectClub, the largest at-home dental alignment company, and others promise to leave patients smiling, an NBC News investigation into a growing list of complaints found that this new trend in straightening teeth is leading to painful problems for some people.” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- b. “All customers are required to see a dentist within six months before starting, which Greenspon Rammelt says offers proof that their teeth are healthy enough for the treatment. **But** NBC News's hidden camera recorded employees at SmileDirectClub shops in Ohio, New Jersey and Alabama advising potential customers they didn't have to see a dentist before starting treatment.” (Ex. 1, NBC Online Report at 4 (emphasis added).)

- c. “The at-home kits offer to straighten teeth for a fraction of the cost of braces. **But** is it worth it?” (Ex. 1, NBC Online Report at 1 (emphasis added).)
- d. “[Female Patient had] been assured that she’d be able to get in touch with her assigned dentist, **but** after multiple attempts, she said she was never connected, nor given contact information.” (Ex. 1, NBC Online Report at 2 (emphasis added).)
- e. “[Male Patient] said that he stopped his treatment after about 3 months, before the 90-day mark when customers are asked to send photos of their mouths to SmileDirectClub to monitor progress. He also said that he tried to get in touch with his assigned dentist, but that he was unable to do so.” (Ex. 1, NBC Online Report at 3.)
- f. “[Female Patient], who says she tried SmileDirectClub because of the money she thought she’d save, wound up spending thousands on traditional braces to fix her teeth.” (Ex. 1, NBC Online Report at 2.)
- g. “SmileDirectClub said they can’t comment on individual cases like [Female Patient]’s and [Male Patient]’s because of privacy concerns, but the company’s chief legal officer, Susan Greenspon Rammelt, said the company has helped more than 750,000 people with its network of licensed dental professionals. ‘They’re subject to the same standards of care that a doctor in a traditional setting is,’ she said. **But** NBC News found complaints related to poor patient outcomes, including problems with bite and spacing.” (Ex. 1, NBC Online Report at 3 (emphasis added).)
- h. Nguyen: “SmileDirectClub told her that treatment would be reviewed remotely by one of its 250 dentists and orthodontists. So this is all done online?” [Female Patient]: “Yes.” Nguyen: “After a year, [Female Patient] was in pain and she says she tried but couldn’t speak to her assigned dentist.” (Ex. 3 , NBC Broadcast Tr. at 3:4–11.)
- i. Nguyen: “[Susan Greenspon Rammelt] says 95 percent of people reviewed for treatment are accepted. They’re required to see a dentist within six months before starting. **But** that’s not what we found with our hidden cameras.” (Ex. 3, NBC Broadcast Tr. at 5:2–5 (emphasis added).)
- j. NBC Nightly News: “SmileDirectClub, the largest at-home dental alignment company, promises to leave patients smiling. **But** an @NBCNews investigation found that some customers have reported painful problems, which the company says are caused by misuse.” (Ex. 2, Tweet at 2 (emphasis added).)
- k. NBC Nightly News: “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 2, Tweet at 3.)

1. Nguyen: “SmileDirectClub says it has helped more than 750K people have access to more affordable teeth straightening. **But** now some former customers are warning people about the quick fix.” (Ex. 2, Tweet at 3 (emphasis added).)

285. Fifth, NBC implied that SDC is a dishonest company by asserting that SDC concealed patient complaints or issues. In the Reports, NBC accused SDC of engaging in practices that were atypical in the dental industry and demonstrated a disregard for the best interest of customers. For example:

- a. “If customers can show the treatment didn’t work and want a refund outside the return window, SmileDirectClub requires they sign a confidentiality agreement, raising the possibility that there may be more complaints than have been made public.” (Ex. 1, NBC Online Report at 4.)
- b. “[Male Patient] refused to sign that confidentiality agreement and was unable to get his money back. ‘It was basically like, here’s your money back, but you can’t ever talk about us,’ he said. ‘It’s not right. There are so many people out there putting their trust in a company that should be doing right by you, and they’re not.’” (Ex. 1, NBC Online Report at 4.)
- c. “The Better Business Bureau reports more than 1,800 complaints nationwide involving SmileDirectClub. Most of the complaints involve customer service issues - such as broken aligners, delivery issues and payment problems - but dozens describe concerns about treatment results: complaints like broken teeth and nerve damage. (Ex. 1, NBC Online Report at 2.)
- d. “Last month, nine members of Congress asked the Food and Drug Administration and the Federal Trade Commission to investigate SmileDirectClub ‘to ensure that it is not misleading consumers or causing patient harm.’” (Ex. 1, NBC Online Report at 2.)
- e. Nguyen: “And now, nine congressmen have asked the FDA and FTC to investigate SmileDirectClub to ensure it is not misleading consumers or causing patient harm.” (Ex. 3, NBC Broadcast Tr. at 3:23–4:2.)
- f. Nguyen: “If customers can show the treatment didn’t work and want a refund outside the return window, they’re required to sign a confidentiality agreement.” (Ex. 3, NBC Broadcast Tr. at 6:5–8.)

2. Individuals who viewed and read the Reports understood that the Reports conveyed that SDC is a dishonest company.

286. The Reports were viewed and read by hundreds of thousands, if not millions, of individuals, including current, future, and past patients, SDC’s investors, and members of NBC-affiliated news organizations and other news organizations. Individuals who viewed and read the Reports understood that the Reports conveyed that SDC is a dishonest company.

287. NBC disseminated the Reports to its affiliates and encouraged them to re-broadcast the Reports on their local news programs. Local NBC anchors who introduced and commented on the Reports made statements demonstrating that they understood that the Reports conveyed that SDC is a dishonest company. For example, local NBC anchors made the following statements based on and about the Reports:

- a. Anchor 1: “An NBC News investigation found a growing number of customers say the at-home tooth straightening treatments didn’t leave them smiling.” . . . Anchor 2: “So now, nine members of Congress have asked the Food and Drug Administration to investigate SmileDirectClub, ‘to ensure it is not misleading consumers or causing patient harm.’” *TMJ4 News Today* (NBC television broadcast Feb. 14, 2020).
- b. Anchor: “Well now some patients are complaining that SmileDirectClub doesn’t live up to expectations and even leaves them in pain.” *KING 5 Early Morning News* (NBC television broadcast Feb. 14, 2020).
- c. Anchor: “Many complained about customer service but also about just damage to their teeth. The process all done remotely. You don’t see an orthodontist in person. One orthodontist says not getting an in-person checkup can lead to permanent damage. . . . Nine Congressman also asked the FDA and FTC to investigate that company.” *41 Action News Today* (NBC television broadcast Feb. 14, 2020).
- d. Anchor: “A new trend in teeth straightening [is] not leaving some patients smiling here. You’ve probably seen the ads for SmileDirectClub. It promises to straighten teeth on average in six months or less and that the cost would be less than traditional braces. But now there’s a growing list of people who claim the treatment is causing them some painful problems. . . . Nine congressmen have asked the FDA and FTC to investigate SmileDirectClub to ensure that it is not misleading consumers

or causing patient harm.” *12 News Today* (NBC television broadcast Feb. 14, 2020).

- e. Anchor: “8 is on your side this morning with an investigation into a company promising to straighten your teeth in just six months. An NBC News investigation is putting a spotlight on SmileDirectClub. It offers a cheaper, at-home alternative for braces by sending a kit in the mail. But dozens of complaints are rolling in to the Better Business Bureau about those kits. One woman complained of jaw pain and migraines. . . . Now lawmakers are calling on the FDA to investigate the company.” *NewsChannel 8 Today* (NBC television broadcast Feb. 14, 2020).
- f. Anchor 1: “Well a company promising to straighten teeth for less than the cost of traditional braces is facing hundreds of complaints.” Anchor 2: “Yeah the company is SmileDirectClub. They send you a kit in the mail, and you do your own treatments, but it may not be that easy. NBC News found a growing list of people who claim the SmileDirectClub treatments are causing them painful problems. . . .” *WXII 12 News* (NBC television broadcast Feb. 14, 2020).
- g. Anchor: “But some patients complain these at-home treatments don’t leave them smiling. NBC’s investigative and consumer correspondent Vicky Nguyen reports. . . . SmileDirect says orthodontists are critical mostly because they’re worried about losing business. But lawmakers are weighing in, California has becoming the first state requiring that a dentist review an x-ray before a patient can start. The law also prohibits agreements that keep unhappy customers from filing a complaint.” *KFOR News 4* (NBC television broadcast Feb. 14, 2020).
- h. Anchor: “An ABC News investigation found a growing number of customers say the at-home teeth straighteners did not leave them smiling. . . . For example, [Female Patient] was diagnosed with a cross bite, possibly caused by the aligners, which put strain on her neck and jaw muscles and caused migraines. . . . So now nine U.S. congressmen have asked the Food and Drug Administration to investigate SmileDirectClub to ensure it is not misleading consumers or causing patient harm.” *TMJ4 News Today* (NBC television broadcast Feb. 14, 2020).
- i. Anchor: “But some patients say the process left them in permanent pain and now Congress is getting involved. Programs like SmileDirectClub rely on dental aligners created with molds and pictures taken by you of your teeth. . . . Now, several congressmen are asking for an investigation into SmileDirectClub. Lawmakers want to make sure the FDA isn’t misleading patients and causing harm.” *News 4 Today* (NBC television broadcast Feb. 14, 2020).

288. NBC understood that the Reports would be republished by other news organizations; and, on information and belief, NBC took steps to encourage and promote other news organizations to republish and further disseminate the Reports. Other news organizations who viewed and read the Reports understood that the Reports conveyed that SDC is a dishonest company. For example, other news organizations made the following statements based on and about the Reports:

- a. Anchor: “Members of Congress are now calling for an investigation into SmileDirectClub, a company that makes at-home teeth straightening kits. They’re a cheaper option than the orthodontist, but some customers say their teeth ended up in worse shape than when they started. The Better Business Bureau reports more than 1,800 complaints.” *ABC News This Morning* (ABC television broadcast Feb. 14, 2020).
- b. Anchor: “Some patients are frowning at a new trend in teeth straightening. You’ve probably seen the ads for SmileDirectClub promising to straighten teeth at home in an average of six months, costing less than traditional braces. But now a growing list of people claim the treatments are causing them painful problems . . . Nine Congressman have asked two federal agencies to investigate SmileDirectClub to ensure the company is not misleading consumers or causing patient harm.” *Fox Richmond Morning News* (FOX television broadcast Feb. 14, 2020).
- c. Anchor: “[N]ow members of Congress are calling for an investigation into SmileDirectClub. I’ve seen a lot of these ads. The company makes teeth-straightening kits that you can use at home. . . . [A] lot of people using them say the kits are not helping, in fact, their teeth are getting worse. The Better Business Bureau has received more than 1,800 complaints.” *KVUE News Daybreak* (ABC television broadcast Feb. 14, 2020).
- d. Anchor: “Straightening your teeth at home with the money-saving kit could end up costing you even more. Dentists say people are having to come in for corrective work for after using the at-home service, SmileDirectClub . . . The Better Business Bureau has gotten more than 1,800 complaints from customers.” *FOX13’s Good Day, Tampa Bay* (FOX television broadcast Feb. 15, 2020).
- e. “NBC took aim at SmileDirectClub with an investigative report causing the company’s stock to drop significantly . . . NBC ran a report questioning the safety of SmileDirectClub’s aligners. . . . After NBC ran their report, SmileDirectClub’s stock took a 16.3% nosedive. . . . One customer, in particular, had a very painful experience. The aligners left the customer

with a messed up jaw and neck, causing serious migraines. . . . NBC added there’s been 1,800 complaints nationwide about SmileDirectClub, although mostly about their poor customer service, shipment delays, and broken aligners. All fair criticisms. When people do file complaints or request refunds, apparently the company asks customers to sign confidentiality agreements. Not a good look, SmileDirectClub. . . . Even worse, last month nine members of Congress asked the Food and Drug Administration and the Federal Trade Commission to investigate the company ‘to ensure that it is not misleading consumers or causing patient harm.’” Jack Giroux, *SmileDirectClub is Pissed at NBC*, GRITDAILY (Feb. 17, 2020).

- f. “SmileDirectClub (NASDAQ:SDC) slips 5% premarket on average volume on the heels of an NBC news report that some customers have experienced problems with its dental aligners, an issue that has surfaced before. The Better Business Bureau has received more than 1,800 complaints, mostly about customer service issues. Last month, nine members of Congress asked the FDA and FTC to investigate the company ‘to ensure that it is not misleading consumers or causing patient harm.’” Douglas House, *SmileDirectClub down 5% premarket on reported aligner problems*, SEEKING ALPHA (Feb. 14, 2020).
- g. “A recent NBC News report discussed concerns with the business model of SmileDirectClub, citing more than 1,800 Better Business Bureau complaints, as well as Congressional investigations into whether or not SDC is ‘misleading consumers or causing patient harm.’” Chris Salierno, *Is SmileDirectClub (SDC) a DSO?*, DENTISTRY IQ (Feb. 18, 2020).
- h. “Hidden cameras placed at SmileDirectClub shops in Ohio, New Jersey and Alabama recorded employees misguiding patients, telling them they don’t have to see a dentist before starting treatment, according to NBC News, who placed the hidden cameras.” Mackenzie Garrity, *“It’s not mandatory”: Hidden cameras at SmileDirectClub shops show employees misguiding patients*, BECKER’S DENTAL + DSO REVIEW (Feb. 14, 2020).
- i. Anchor: “[A]fter a damning expose by NBC calling into question how medically sound the company’s teeth straightening service is[,] SmileDirect is slamming the report which cited dozens of customer complaints reported to the Better Business Bureau. . . . Investors are unsettled and the stock plummeted.” *Spectrum News 1 Afternoon* (Spectrum News broadcast, Feb. 14, 2020).

289. Current, former, and potential patients using SDC’s platform for the treatment of their mild to moderate malocclusion viewed and read the Reports as well as the republication of

the Reports by NBC’s affiliates and other news organizations. Current, former, and potential patients understood that the Reports conveyed that SDC is a dishonest company. For example:

- a. “[A]nd I just saw something on the news where you guys do a little run around game. Y’all have made the news.”
- b. “It was the article from NBC that SDC is under investigation [and that] there have been complaint[s] about aligners making people[’s] teeth fall [out].”
- c. “I should have read [the complaints better] before deciding [to] participate; [I should have seen the] article about the complaints and investigation about the company in the NBC [broadcast].”
- d. “Then I read a news [article], where SmileDirectClub was in . . . an investigation [for deception].”
- e. “On the news last night[, there was a story] about over 2000 BBB complaints about painful [side effects] or issues.”

290. Other individuals who viewed and/or read the Reports understood that the Reports conveyed that SDC is a dishonest company. For example:

- a. “[T]he report seems fair[,] while one[-]sided[. T]here is an issue that Smile club needs to fix[;] they sound crooked[.]” Comment to “SmileDirectClub fires back at NBC News report,” YAHOO! FINANCE (Feb. 14, 2020).
- b. “[SDC] is screwing so many people over it’s ridiculous. Thank god I never did this. Went right to an orthodontist I knew.” Comment to NBC News Video “SmileDirectClub Promises Easy Teeth Straightening. Some Patients Report Problems,” YOUTUBE (Feb 13, 2020).
- c. “There’s many reasons why people don’t perform dental work on themselves. And many more reasons why people need to be qualified to work on others[’] teeth. [Susan Greenspon Rammelt is] lying through her fake teeth. As if it’s not enough that people are reporting pain and problems following use of their product, she shift[s] all blame onto patients and sticks with it. Disgusting. She should lose her license.” Comment to NBC News Video “SmileDirectClub Promises Easy Teeth Straightening. Some Patients Report Problems,” YOUTUBE (Feb 13, 2020).
- d. “[SDC] is a total scam. Invisalign rules[.]” Comment to NBC News Video “SmileDirectClub Promises Easy Teeth Straightening. Some Patients Report Problems,” YOUTUBE (Feb 13, 2020).
- e. “What NBC is pointing out is deceitful advertising. Meaning [SDC] only is good [for] very minor corrections and not major ones. Smile Direct is

- profiting [from] major corrections with bad results.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
- f. “Good job NBC. Patients and consumers need to be protected from corporations like Smile Direct Club which mislead people and hide behind attorneys.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
 - g. “Any company that makes you sign a non[-]disclosure agreement in order to get a refund for poor quality products is damn shady and crooked.” Comment to “SmileDirectClub turns up the heat on NBC News’ investigative report,” YAHOO! FINANCE (Feb. 16, 2020).
 - h. “Shut this scam down. \$SDC.” TWITTER (Feb. 13, 2020, 6:35PM).
 - i. “The fraud that is direct-to-consumer teeth straightening (SmileDirect Club, Candid, Smilelove, etc.) is finally getting national attention. You get what you pay for and, unfortunately in the case of [OTC] aligners, it could include poor results, tooth/jaw pain and even tooth loss. Never trust your healthcare to an online business. Only entrust your and your children’s orthodontic treatment to the one dental professional that is specifically trained in the guidance of growth and alignment of teeth and jaws . . . an ORTHODONTIST!” Comment, FACEBOOK (Feb. 13, 2020, 6:50 PM).
 - j. “#toogoodtobetrue Don’t fall for this #scam.” TWITTER (Feb. 17, 2020, 4:03PM).
 - k. “[K]new this company was a sham.” Comment , FACEBOOK (Feb. 20, 2020, 8:34AM).
 - l. “I knew it was scammy!!!” Comment, FACEBOOK (Feb. 20, 2020, 10:55AM).
 - m. “So what is new. It just proves these people are a***holes after money!!!!!!!!!! And liars!” Comment, FACEBOOK (Feb. 20, 2020, 6:26AM).
 - n. “A whole scam [chin scratching emoji,] just terrible.” Comment, FACEBOOK (Feb. 23, 2020, 10:21PM).
 - o. “[T]his is a good video for us to share. That company is such a fraud!!! Urg!!” Comment, FACEBOOK (Feb. 22, 2020, 8:34AM).
 - p. “These people are pathetic . . . they will lie straight to your face. You get what you pay for. This is serious treatment and they treat it like some gimmick to get millions into their accounts. Honestly I can’t believe how people fall for it. If it sounds too good to be true . . . you know the rest.” Comment, FACEBOOK (Feb. 22, 2020, 8:50PM).

- q. “If it sounds to good to be true, it is. She was scammed.” Comment to NBC News Video “SmileDirectClub Promises Easy Teeth Straightening. Some Patients Report Problems,” YOUTUBE (Feb. 13, 2020).
- r. “This company sounds like a ripoff. What kind of company makes customers sign a non disclosure agreement. It sounds like they get a lot of complaints and they want to prevent customers from speaking out.” Comment to NBC News Video “SmileDirectClub Promises Easy Teeth Straightening. Some Patients Report Problems,” YOUTUBE (Feb. 13, 2020).

291. Comments and statements made by individuals who viewed and read the Reports support the conclusion that the Reports conveyed that SDC is a dishonest company. These individuals made the above comments and statements because the gist and overall message of the Reports was that SDC is a dishonest company.

3. NBC’s implication about SDC’s honesty is false.

292. NBC’s implication that SDC is a dishonest company was factually inaccurate for multiple reasons. First and foremost, SDC’s public discussion of the treatment individuals received through SDC’s platform is factually accurate. SDC’s advertising and marketing, which is done on behalf of the SDC-affiliated doctors who use SDC’s platform, accurately describes the treatment that patients receive from SDC-affiliated doctors using SDC’s platform.

293. Second, NBC’s statements regarding the safety of the treatment patients receive through SDC’s platform were factually inaccurate for the reasons discussed above. (*Supra* ¶¶ 220–228). Treatment by SDC-affiliated doctors using SDC’s platform is safe. The absolute and relative safety of treatment of mild to moderate malocclusion using SDC’s platform is the best (or among the very best) of any manner of treatment for this type of malocclusion.

294. Third, NBC’s statements regarding patients using SDC’s platform engaging in “do it yourself” dentistry were factually inaccurate for the reasons discussed above. (*Supra* ¶¶ 176–187, 243–253). SDC-affiliated doctors are solely responsible for, and participate in and oversee,

every step of patient treatment. Patients are not engaged in “do it yourself” dentistry. Patients are treated by dentists and orthodontists licensed and in good standing in the state in which they reside.

295. Fourth, the juxtaposition that NBC used to contradict or undermine the statements made by SDC in its Reports was factually inaccurate for a variety of reasons: (a) NBC used factually inaccurate statements about the safety of the treatment patients received to contradict or undermine SDC’s statements; (b) NBC used factually inaccurate statements about the involvement of doctors in the treatment patients received to contradict or undermine SDC’s statements; (c) NBC took statements made by an SDC officer (Susan Greenspon Rammelt) and SmileShop employees out of context; and (d) NBC publicized only a portion of the statements made by an SDC officer (Susan Greenspon Rammelt) and SmileShop employees to distort the meaning of their statements.

296. Fifth, NBC’s assertions regarding SDC using practices to conceal patient complaints or issues were factually inaccurate for a variety of reasons: (a) some patients sign a release that includes a confidentiality provision when they have requested a refund outside of their contractual right to receive a refund, *i.e.*, as part of a settlement; (b) the inclusion of a confidentiality provision as part of a release is consistent with guidance and recommendations by dental trade associations, specifically the AAO; (c) SDC’s use of a general release with a confidentiality provision does not violate any state or federal regulations; (d) SDC does not require individuals to sign confidentiality agreements to receive treatment; (e) SDC’s rating with the BBB is at the highest possible level; (f) the volume of negative reviews of SDC with the BBB is a small percentage of the positive reviews and the number of patients who have been treated through SDC’s platform; (g) the FDA and FTC were not conducting any investigation into SDC at the time of the Reports; (h) SDC was in compliance with all FDA and FTC regulations at the time of the Reports; and (i) the treatment that patients receive through SDC’s platform is safe.

VI. NBC PUBLISHED FALSE STATEMENTS AND IMPLICATIONS ABOUT SMILEDIRECTCLUB WITH ACTUAL MALICE

297. NBC knew that its statements and implications about SDC were false and misleading at the time it published the Reports. NBC knew that its statements and implications were false based on the information that SDC provided to NBC, as well as the information that SDC made available to NBC prior to its publication of the Reports. NBC had information in its possession, or readily available, demonstrating the falsity of each statement and implication discussed above.

298. Moreover, NBC acted with reckless disregard for the truth by, among other things, (a) failing to corroborate statements made about SDC by sources when it had obvious reasons to doubt the sources and their statements; (b) failing to corroborate or verify statements made about SDC by alleged patients when it had obvious reasons to doubt the accuracy of the statements; and (c) failing to corroborate or verify the statements and implications made about SDC in its Reports when it had obvious reason to doubt the accuracy of those statements and implications. NBC purposefully avoided learning the falsity of its statements and implications even though NBC had obvious reasons to doubt the veracity of the information included in its Reports.

A. NBC knew that the statements and implications made in the Reports were false based on the information provided and made available by SDC.

299. SDC provided NBC, and made available to it, a significant volume of information prior to the publication of the Reports that contradicted the statements and implications made in the Reports. Based on this information, NBC knew that the statements and implications made in the Reports were factually inaccurate and misleading.

300. First, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information provided by an SDC officer and an SDC-affiliated doctor that NBC interviewed. Among others, SDC made Susan Greenspon Rammelt, Dr. Gary

Moore, and Dr. Jeffrey Sulitzer available for interviews. NBC declined to interview Dr. Sulitzer (discussed below). NBC interviewed Ms. Rammelt and Dr. Moore prior to publication of the Reports. The information provided by Ms. Rammelt and Dr. Moore contradicted the statements and implications made in the Reports. (*See generally* Apps. A, C–E, G–S, U; *see also* Excerpts from NBC Interview of Susan Greenspon Rammelt, Chief Legal Officer, SmileDirectClub (Jan. 28, 2020) (Ex. 57).)

301. Second, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information provided by former patients. SDC provided NBC with contact information for dozens of individuals who were treated by SDC-affiliated doctors using SDC’s platform (“former patients”). NBC spoke with several of the former patients prior to the publication of the Reports. The information provided by the former patients contradicted the statements and implications made in the Reports.

302. Third, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information provided by SmileShop employees. NBC secretly, and without SDC’s or its employees’ permission, filmed three employees who worked at SmileShops (“SmileShop employees”). NBC published portions of secret interactions with the SmileShop employees in the Reports. The segments were taken out of context to distort the meaning and significance of the statements made by the SmileShop employees. Moreover, the information that the SmileShop employees provided to NBC during these interactions contradicted the statements and implications made in the Reports.

303. Fourth, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information provided by SDC’s public relations team, which was working with NBC under the direction of SDC’s legal counsel. Among others, NBC spoke with

and exchanged emails with Kim Atkinson, SDC's Vice President of Communications, and Kate Ottavio Kent, Vice President at ICR, a communications and public relations company, starting in December 2019 and through February 2020. The information that Ms. Atkinson and Ms. Kent provided to NBC contradicted the statements and implications made in the Reports.

304. Fifth, NBC knew that the statements and implications made in the Reports were factually inaccurate based on documentation that SDC provided to NBC. The documentation that SDC provided to NBC contradicted the statements and implications made in the Reports. Among other things, SDC provided NBC with the following documentation:

- a. Information Concerning SDC's Business Model and Platform (provided Dec. 23, 2019) (Ex. 5);
- b. Embargoed Press Release dated Jan. 6, 2020: Smile Direct Club Launches New Line of Oral Care Products Available Exclusively at Walmart (provided Dec. 23, 2019) (Ex. 5 at 2);
- c. Press Release dated July 28, 2016: Align Technology to Supply Non-Invisalign Clear Aligners to SmileDirectClub in North America (provided Dec. 23, 2019) (Ex. 5 at 1, 6);
- d. FDA Registration Statement for Access Dental Lab, LLC dated Oct. 3, 2019 (provided Dec. 23, 2019) (Ex. 5E);
- e. Brief for the United States and The Federal Trade Commission as Amici Curiae Supporting Plaintiffs-Appellees, *SmileDirectClub v. Jackson et al.*, No. 19-11502 (11th Cir. Sept. 11, 2019) (provided Dec. 23, 2019) (Ex. 5C);
- f. Letter dated May 10, 2019, from Dr. Jeffrey Sulitzer, Chief Clinical Officer, SmileDirectClub to Division of Dockets Management, FDA (provided Dec. 23, 2019) (Ex. 5D);
- g. Slide Deck Regarding Falsity of ADA Allegations, Background of California Statute AB 1519, and other topics (provided Dec. 23, 2019) (Ex. 5B);
- h. Letter dated May 30, 2019, from Dr. Jeffrey Shuren, Director, Center for Devices and Radiological Health, to C. Michael Kendall, Sr. Associate General Counsel, American Dental Association (provided Dec. 23, 2019) (Ex. 5A);

- i. Contact Information for Law Professor to Discuss AB1519 Anticompetitive Effects (provided Dec. 23, 2019) (Ex. 5 at 1);
- j. Contact Information for two SDC Customers (provided Dec. 23, 2019) (Ex. 5 at 2);
- k. Contact Information for four SDC Customers (provided Jan. 24, 2020) (Ex.7 at 3-4);
- l. Contact Information for 22 SDC Customers (provided Jan. 27, 2020) (Ex. 7 at 2-3);
- m. Link to Webpage, “ADA Policy on Teledentistry” (provided Feb. 1, 2020) (Ex. 8 at 3, Ex. 9);
- n. Link to Webpage, “Refund Fees to Prevent Malpractice Allegations” (provided Feb. 1, 2020) (Ex. 8 at 3, Ex. 10);
- o. Link to Webpage Containing the ADA Note, “How The Dental Peer Review System Works And What You Expect From It” (provided Feb. 1, 2020) (Ex. 8 at 3, 11);
- p. Information Concerning Reviews of SDC Posted on Better Business Bureau Website (provided Feb. 1, 2020) (Ex. 8 at 4);
- q. Data Concerning Campaign Contributions of Interested Dental Associations and Politicians in California, Georgia, and Washington (provided Feb. 11, 2020) (Ex. 8 at 1-2);
- r. Data Concerning Complaints against Dentists and SDC (provided Feb. 11, 2020) (Ex. 8 at 2-3);
- s. Information Concerning California Statute AB1519 (provided Feb. 14, 2020) (Ex. 12 at 2); and
- t. Contact Information for the Better Business Bureau (provided Feb. 14, 2020) (Ex. 12 at 2-3).

305. Sixth, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information SDC made available on its website. On information and belief, NBC reviewed the information made available on SDC’s website prior to the publication of the Reports. SDC makes this allegation based on the following facts: (a) SDC’s website is publicly available; (b) NBC’s reporters were aware of SDC’s website; and (c) NBC’s

code of conduct requires investigation of the subject matter of the Reports, which would include reviewing SDC's website. The information available on SDC's website contradicted the statements and implications made in the Reports. Among other pages, information on the following pages on SDC's website contradicted the statements and implications made in the Reports:

- a. Home Page (Ex. 13);
- b. How It Works (Ex. 14);
- c. Am I A Candidate? (Ex. 15);
- d. Results (Ex. 16);
- e. Have Crowded Teeth? (Ex. 17);
- f. Need To Fix Gap Teeth? (Ex. 18);
- g. Need Overbite Correction? (Ex. 19);
- h. Need Underbite Correction? (Ex. 20);
- i. Need Crossbite Correction? (Ex. 21);
- j. What Are SmileDirectClub Clear Aligners? (Ex. 22);
- k. Introducing Nighttime Clear Aligners™, Only From Smile Direct Club (Ex. 23);
- l. Frequently Asked Questions (Ex. 24);
- m. What Are Clear Aligners? (Ex. 25);
- n. Meet The Dentists And Orthodontists Behind Your New Smile (Ex. 26);
- o. Meet Your Dentist: SmileDirectClub Q&A with Dr. Sulitzer (Ex. 27);
- p. Do Clear Aligners Hurt? (Ex. 28);
- q. How long does SmileDirectClub take to straighten teeth? (Ex. 29);
- r. What can I expect during my SmileDirectClub treatment? (Ex. 30);
- s. 7 reasons clear aligners are the best investment you'll make in 2019 (Ex. 31);

- t. Review options for your smile: The benefits of clear aligners (Ex. 32);
- u. SmileDirectClub MythChompers: 4 Clear Aligner Myths – CHOMPED (Ex. 33);
- v. Can you straighten your teeth without braces? (Ex. 34);
- w. 7 Things That Happen Wearing Aligners That Are Totally Normal (Ex. 35);
- x. How SmileDirectClub is bringing orthodontics to more Americans than ever before (Ex. 36);
- y. 9 things you need to know before you start SmileDirectClub (Ex. 37);
- z. What is a 3-D scan? (Ex. 38);
- aa. What happens after you complete a scan or impression kit? (Ex. 39);
- bb. What’s the difference between SmileDirectClub and Invisalign? (Ex. 40);
- cc. Your Impression Kit Questions: Answered (Ex. 41); and
- dd. The Dangers of 3D Printing Your Own Braces (Ex. 62).

306. Seventh, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information SDC made available on its YouTube channel. On information and belief, NBC reviewed the information made available on SDC’s YouTube channel prior to the publication of the Reports. SDC makes this allegation based on the following facts: (a) the Reports included images that were available on SDC’s YouTube channel; (b) SDC’s YouTube channel is publicly available; and (c) NBC’s code of conduct requires investigation of the subject matter of the Reports, which would include reviewing SDC’s YouTube channel. The information available on SDC’s YouTube channel contradicted the statements and implications made in the Reports. Among other videos, information in the following videos on SDC’s YouTube channel contradicted the statements and implications made in the Reports:

- a. Alex Fenkell Spotlight: Forbes Under 30 Summit | SmileDirectClub (Feb. 6, 2020) (Ex. 42);

- b. Alex Fenkell Speaks at HP's Senior Leadership Conference | SmileDirectClub (Jan. 21, 2020) (Ex. 43);
- c. Co-Founder Alex Fenkell & Chief People Officer Cheryl DeSantis appear on Nasdaq's 'Cultural Capital' (Sept. 16, 2019) (Ex. 44);
- d. Is nighttime clear aligner therapy safe? | SmileDirectClub (Aug. 7, 2019) (Ex. 45);
- e. This is a 3-D Image (Aug. 2, 2018) (Ex. 46);
- f. What's it like to get a 3-D image at a SmileShop? See it for yourself. | Smile Direct Club (May 2, 2018) (Ex. 47);
- g. Holiday SmileParty: Ready to Take your Impressions? | Smile Direct Club (Apr. 5, 2018) (Ex. 48);
- h. It's a SmileParty: Take Your at-home Impressions with a Dentist! | Smile Direct Club (Mar. 5, 2018) (Ex. 49);
- i. How Do Clear Aligners Work? (Sept. 29, 2017) (Ex. 50);
- j. September SmileParty: Take Your Impressions with Us! | Smile Direct Club (Sept. 28, 2017) (Ex. 51);
- k. August SmileParty: Take Your Impressions with Us! | Smile Direct Club (Sept. 28, 2017) (Ex. 52);
- l. SmileDirectClub, News to Smile About – SmileDirectClub on Nasdaq (Sept. 16, 2019) (Ex. 58);
- m. SmileDirectClub, This is an Aligner (May 29, 2019) (Ex. 59);
- n. SmileDirectClub, How Does Smile Direct Club Work? (May 29, 2019) (Ex. 60); and
- o. SmileDirectClub, What parents need to know about clear aligners (July 26, 2018) (Ex. 61).

307. Eighth, NBC knew that the statements and implications made in the Reports were factually inaccurate based on the information SDC made available in its filings with the Securities & Exchange Commission ("SEC"). On information and belief, NBC reviewed the information made available in SDC's SEC filings prior to the publication of the Reports. SDC makes this allegation based on the following facts: (a) SDC's SEC filings are publicly available; (b) NBC's

reporters were aware of SDC's SEC filings; and (c) NBC's code of conduct requires investigation of the subject matter of the Reports, which would include reviewing SDC's SEC filings. The information available in SDC's SEC filings contradicted the statements and implications made in the Reports. Among other filings, information in the following filings by SDC with the SEC contradicted the statements and implications made in the Reports:

- a. Form 10-Q Report (Nov. 14, 2019) (Ex. 53); and
- b. Form S-1 Prospectus (Sept. 11, 2019) (Ex. 54).

B. NBC acted with reckless disregard for the truth by failing to corroborate or verify statements and implications it had obvious reason to doubt were accurate.

308. NBC had obvious reasons to doubt the veracity of the statements and implications made in the Reports because: (a) the information provided and made available to NBC by SDC contradicted the statements and implications in the Reports; (b) the sources that NBC relied upon were known by NBC to be unreliable; and (c) the statements and implications made by NBC were not supported by contemporaneous or readily verifiable sources. NBC's failure to corroborate or verify the statements and implications made in the Reports, under these circumstances, constitutes reckless disregard for the truth.

309. First, on information and belief, NBC failed to verify or corroborate the statements made by Dr. Chung Kau regarding SDC and the treatment provided by SDC-affiliated doctors who use SDC's platform. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or study supporting Dr. Kau's statements; (b) NBC did not identify any document or study supporting Dr. Kau's statements in its Reports; (c) NBC did not share with SDC, after it received a retraction demand, any document or study supporting Dr. Kau's statements; and (d) SDC is not aware of any credible study supporting Dr. Kau's statements.

310. NBC knew that Dr. Kau was not a reliable source of information regarding SDC and the treatment provided by SDC-affiliated doctors (or had obvious reasons to doubt that Dr. Kau was a reliable source of information) for the following reasons: (a) Dr. Kau is not a practicing doctor; (b) Dr. Kau has never treated a patient using SDC's platform; (c) Dr. Kau has received significant money from SDC's competitor, Align Technology; and (d) Dr. Kau is developing a product to compete with the clear aligners prescribed by SDC-affiliated doctors who use SDC's platform. NBC acted with reckless disregard by failing to verify or corroborate the statements made by Dr. Kau under these circumstances.

311. Second, on information and belief, NBC failed to verify or corroborate the statements made by Female Patient and Male Patient. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or statement from a treating dentist or orthodontist supporting their statements; (b) NBC did not identify any document or statement from a treating dentist or orthodontist supporting their statements in its Reports; (c) NBC did not share with SDC, after receiving a retraction demand, any document or statement from a treating dentist or orthodontist supporting their statements; and (d) SDC is not aware of any document or statement from a treating dentist or orthodontist supporting their statements.

312. NBC knew that Female Patient and Male Patient were not reliable sources of information regarding SDC and the treatment provided by SDC-affiliated doctors using SDC's platform (or had obvious reasons to doubt that they were reliable sources of information) for the following reasons: (a) Female Patient and Male Patient did not pursue legal action against SDC or their SDC-affiliated doctor; (b) Female Patient and Male Patient did not report SDC or their SDC-affiliated doctor to any state board; (c) on information and belief, Female Patient and Male Patient

did not provide NBC with a statement by their treating dentist or orthodontist supporting their statements; and (d) Female Patient has a criminal record and the underlying crime goes to her credibility and veracity. NBC acted with reckless disregard by failing to verify or corroborate the statements made by Female Patient and Male Patient under these circumstances.

313. Third, on information and belief, NBC failed to verify or corroborate claims by “unidentified patients” regarding their alleged treatment by their SDC-affiliated doctors using SDC’s platform—*i.e.*, the patients NBC stated suffered physical and health problems as a result of their treatment using SDC’s platform. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or statement from a treating dentist or orthodontist supporting the claims of the unidentified patients; (b) NBC did not identify any document or statement from a treating dentist or orthodontist supporting the claims of the unidentified patients in its Reports; (c) NBC did not share with SDC after receiving a retraction demand any document or statement from a treating dentist or orthodontist supporting the claims of the unidentified patients; and (d) SDC is not aware of any document or statement from a treating dentist or orthodontist supporting the claims of the unidentified patients.

314. NBC knew that the unidentified patients were not reliable sources of information regarding SDC and the treatment provided by SDC-affiliated doctors (or had obvious reasons to doubt that they were reliable sources of information) for the following reasons: (a) SDC informed NBC that some of the individuals who posted or made complaints about their treatment were not actual patients; (b) SDC informed NBC that dental trade associations and organizations have orchestrated a campaign to discredit SDC and, therefore, had a motivation to publish false information about SDC or encourage individuals to publish false information; (c) on information and belief, NBC did not contact any of the unidentified patients; and (d) NBC did not ask SDC to

investigate the claims of the unidentified patients. NBC acted with reckless disregard by failing to verify or corroborate the claims made by the unidentified patients.

315. Fourth, on information and belief, NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or study supporting the statements and implications made in the Reports regarding the safety of the treatment by SDC-affiliated doctors; (b) NBC did not identify any document or study supporting its statements and implications regarding the safety of the treatment by SDC-affiliated doctors in its Reports; (c) NBC did not share with SDC, after receiving a retraction demand, any document or study supporting its statements and implications regarding the safety of the treatment by SDC-affiliated doctors; (d) SDC is not aware of any credible study supporting the statements and implications made regarding the safety of the treatment by SDC-affiliated doctors; and (e) clinical studies support the safety of treating patients with mild to moderate malocclusion using a teledentistry platform like that offered by SDC.

316. NBC knew that whatever “sources” it may have had criticizing the safety of treatment by SDC-affiliated doctors using SDC’s platform were not reliable (or had obvious reasons to doubt that they were reliable sources of information) for the following reasons: (a) SDC provided NBC with information verifying the safety of the treatment when using its platform; (b) SDC made available to NBC information verifying the safety of the treatment when using its platform; (c) the practices of SDC-affiliated doctors who use SDC’s platform are overseen and regulated by state dental boards, none of which have taken any final action against SDC in the six years that it has been operating and many of which have affirmatively confirmed that SDC is not engaging in any improper or illegal behavior, thereby confirming its platform and the treatment

practices enabled by that platform are safe; (d) SDC-affiliated doctors are licensed and in good standing in each state where they practice and take an oath regarding patient care; and (e) SDC informed NBC that dental trade associations and organizations have orchestrated a campaign to discredit SDC and, therefore, had a motivation to publish false information about SDC, including regarding the safety of treatment. NBC acted with reckless disregard by failing to verify or corroborate the claims made by “sources” criticizing the safety of treatment by SDC-affiliated doctors.

317. Fifth, on information and belief, NBC failed to verify or corroborate its statements and implications about the thoroughness of, and doctor involvement in, the treatment received by patients using SDC’s platform. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or study supporting the statements and implications made in the Reports regarding the thoroughness of, and doctor involvement in, the treatment patients receive; (b) NBC did not identify any document or study supporting its statements and implications regarding the thoroughness of, and doctor involvement in, the treatment patients receive in its Reports; (c) NBC did not share with SDC, after receiving a retraction demand, any document or study supporting its statements and implications regarding the thoroughness of, and doctor involvement in, the treatment patients receive; and (d) SDC is not aware of any credible study supporting the statements and implications made regarding the thoroughness of, and doctor involvement in, the treatment patients receive.

318. NBC knew that whatever “sources” it may have had criticizing the thoroughness of, and doctor involvement in, treatment using SDC’s platform were not reliable (or had obvious reasons to doubt that they were reliable sources of information) for the following reasons: (a) SDC provided NBC with information verifying the procedures followed by SDC-affiliated doctors

treating patients using SDC's platform; (b) SDC made available to NBC information verifying the procedures followed by SDC-affiliated doctors treating patients using SDC's platform; (c) SDC-affiliated doctors are licensed and in good standing in each state where they practice and take an oath regarding patient care; and (d) SDC informed NBC that dental trade associations and organizations have orchestrated a campaign to discredit SDC and, therefore, had a motivation to publish false information about SDC, including regarding the thoroughness of, and doctor involvement in, treatment using SDC's platform. NBC acted with reckless disregard by failing to verify or corroborate the claims made by "sources" criticizing the thoroughness of, or doctor involvement in, treatment received by patients using SDC's platform.

319. Sixth, on information and belief, NBC failed to verify or corroborate its statements and implications regarding the effectiveness of treatment using SDC's platform. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or study supporting the statements and implications made in the Reports regarding the effectiveness of treatment using SDC's platform; (b) NBC did not identify any document or study supporting its statements and implications regarding the effectiveness of treatment using SDC's platform in its Reports; (c) NBC did not share with SDC, after receiving a retraction demand, any document or study supporting its statements and implications regarding the effectiveness of treatment using SDC's platform; (d) SDC is not aware of any credible study supporting the statements and implications made regarding the effectiveness of treatment using SDC's platform; and (e) clinical studies support the effectiveness of treating patients with mild to moderate malocclusion using a teledentistry platform like that offered by SDC.

320. NBC knew that whatever "sources" it may have had criticizing the effectiveness of treatment using SDC's platform were not reliable (or had obvious reasons to doubt that they were

reliable sources of information) for the following reasons: (a) SDC provided NBC with information verifying the effectiveness of treatment using SDC's platform; (b) SDC made available to NBC information verifying the effectiveness of treatment using SDC's platform; (c) SDC-affiliated doctors are licensed and in good standing in each state where they practice and take an oath regarding patient care; and (d) SDC informed NBC that dental trade associations and organizations have orchestrated a campaign to discredit SDC and, therefore, had a motivation to publish false information about SDC, including regarding the safety of treatment. NBC acted with reckless disregard by failing to verify or corroborate the claims made by "sources" criticizing the effectiveness of treatment using SDC's platform.

321. Seventh, on information and belief, NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry. SDC makes this allegation based on the following facts: (a) NBC did not share with SDC prior to the publication of the Reports any document or study supporting the statements and implications made in the Reports regarding SDC's compliance with state and federal regulations; (b) NBC did not identify any document or study supporting its statements and implications regarding SDC's compliance with state and federal regulations in its Reports; (c) NBC did not share with SDC after receiving a retraction demand any document or study supporting its statements and implications regarding SDC's compliance with state and federal regulations; and (d) SDC is not aware of any credible study or report supporting the statements and implications made regarding SDC's compliance with state and federal regulations.

322. NBC knew that whatever "sources" it may have had claiming that SDC did not comply with state and federal regulations were not reliable (or had obvious reasons to doubt that they were reliable sources of information) for the following reasons: (a) no court has found that

SDC or its affiliated doctors are in violation of state and federal regulations; (b) a New Jersey court recently found that SDC does not violate its state regulations governing the practice of dentistry; (c) SDC provided NBC with information verifying that it did not violate state or federal regulations; (d) SDC informed NBC of the actual requirements of the recently enacted law in California; (e) the treatment that patients received from SDC-affiliated doctors complies with all of the state and federal regulations that NBC reviewed prior to publishing the Reports; and (f) SDC informed NBC that individuals who claim SDC does not comply with state or federal regulations have a financial interest to defame SDC, including regarding its compliance with state and federal regulations. NBC acted with reckless disregard by failing to verify or corroborate the claims made by “sources” claiming that SDC did not comply with state and federal regulations.

323. Eighth, NBC purposefully avoided learning the truth about SDC and the treatment that patients receive from SDC-affiliated doctors by refusing to interview Dr. Jeffrey Sulitzer. Dr. Sulitzer is SDC’s Chief Clinical Officer. He oversees the vetting and training of SDC-affiliated doctors and use of SDC’s platform. NBC knew that Dr. Sulitzer was an important source of information. SDC made Dr. Sulitzer available to be interviewed by NBC prior to the publication of the Reports. NBC refused to interview Dr. Sulitzer even though its Reports were not time sensitive. As discussed below, Dr. Sulitzer would have provided NBC information that contradicted the statements and implications made in the Reports, including that treatment using SDC’s platform is safe, doctor directed, effective, and compliant with state and federal regulations.

324. Ninth, NBC purposefully avoided learning the truth about SDC and the treatment that patients receive from SDC-affiliated doctors by refusing to interview Professor Joshua Wright. Professor Wright was Commissioner of the Federal Trade Commission from 2013 to 2015, and currently is a Professor of Law at George Mason University’s Scalia Law School. SDC identified

Professor Wright as a source that NBC should interview prior to the publication of the Reports. NBC refused to interview Professor Wright even though its Reports were not time sensitive. As discussed below, Professor Wright would have provided NBC information that contradicted the statements and implications made in the Reports, including that treatment using SDC’s platform was safe and compliant with state and federal regulations.

325. Tenth, NBC and Mr. Holt purposefully avoided overseeing and confirming the accuracy of the work performed by Ms. Nguyen. SDC makes this allegation based on the following facts: (a) SDC, through its counsel, emailed Mr. Holt prior to the publication of the Reports to express concerns over the bias and accuracy of the upcoming Reports by Ms. Nguyen; (b) Mr. Holt did not respond to the email he received from SDC’s counsel; (c) NBC knew that Ms. Nguyen had previously engaged in unethical and unprofessional reporting in connection with “investigative” reports, and, therefore, knew her approach to reporting needed to be more carefully scrutinized; and (d) the Reports would not have included the false and misleading statements and implications had NBC and Mr. Holt: (i) overseen and confirmed the accuracy of the work performed by Ms. Nguyen; and (ii) been committed to publishing accurate information, as opposed to false and misleading statements and implications.

C. NBC knowingly violated generally accepted journalism standards when “investigating” and publishing the Reports.

326. NBC requires its reporters and producers to adhere to a code of conduct when investigating and publishing reports. One of the reasons for journalists to adhere to a code of conduct is to make sure they do not act with reckless disregard for the truth (during the investigation stage) and do not publish misleading reports (during the publication stage).

327. The reporter and producers involved with the Reports violated generally accepted journalism standards. The reporters and producers were familiar with generally accepted

journalism standards by virtue of their employment with NBC, prior experience, and education. However, the reporters and producers intentionally violated those generally accepted journalism standards. They did so because adhering to generally accepted journalism standards would not have allowed them to: (a) purposefully avoid learning the truth about SDC; and (b) publish a factually inaccurate and misleading report about SDC.

328. The reporters and producers violated at least eleven generally accepted journalism standards. First, generally accepted journalism standards encourage reporters and producers to be accurate and fair when gathering and reporting information. NBC violated this standard because, among other things, it reported information that it knew was not accurate, reported information it knew was misleading, and purposefully avoided learning the truth that was inconsistent with its preconceived narrative.

329. Second, generally accepted journalism standards encourage reporters and producers to verify information before releasing it. NBC violated this standard because, among other things, it did not verify or corroborate the information provided by its sources (whom it had obvious reasons to doubt) and did not verify or corroborate the negative statements it published about SDC.

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

331. Fourth, generally accepted journalism standards encourage reporters and producers to disclose information about their sources so that viewers and readers can make informed

decisions regarding credibility. NBC violated this standard because it failed to disclose its sources' lack of experience, lack of credibility, lack of firsthand knowledge, and bias.

332. Fifth, generally accepted journalism standards encourage reporters and producers to seek out opposing views for a report. NBC violated this standard because it intentionally avoided publishing statements by individuals, including former patients, who had positive experiences with SDC. Indeed, Ms. Nguyen admitted in her social media postings that her intent was to avoid reporting information from patients who had a positive experience with SDC.

333. Sixth, generally accepted journalism standards encourage reporters and producers to avoid distorting facts. NBC violated this standard because it did not provide the proper context for the statements made in the Reports. The majority of the statements made in the Reports were misleading because NBC omitted material facts to create a false impression of SDC.

334. Seventh, generally accepted journalism standards encourage reporters and producers to treat sources and subjects with respect. NBC violated this standard during its undercover and hidden recordings of SmileShop employees. NBC acted confrontational with the employees, did not inform them they were being recorded, and sought to obtain "gotcha" admissions that NBC used out of context in the Reports. NBC further violated this standard during its interview with Ms. Rammelt by repeatedly asking the same question(s) in an effort to obtain a response that was more consistent with its preconceived, anti-SDC storyline.

335. Eighth, generally accepted journalism standards encourage reporters and producers to consider the long-term impact of their publications. NBC violated this standard by publishing the Reports with the intent of discouraging patients from seeking treatment using SDC's platform. NBC did not consider the long-term impact of such a publication on patient health—patients who

need treatment will now be concerned about seeking it—and SDC, its employees, the SDC-affiliated doctors, and its shareholders.

336. Ninth, generally accepted journalism standards encourage reporters and producers to avoid conflicts of interest. NBC violated this standard by allowing Ms. Nguyen to elevate her own self-interest above fairness and accuracy. Ms. Nguyen’s actions before and after publication evidence an interest in promoting her personal agenda, as opposed to reporting the truth; and, she celebrated the fact that the Reports hurt SDC on her social media platforms.

337. NBC also violated this standard by allowing Ms. Nguyen to investigate and publish a report on the practice of dentistry. On information and belief, Ms. Nguyen’s husband is an anesthesiologist who is affiliated with an oral surgery practice that engages in the traditional brick-and-mortar approach to treating mild to moderate malocclusion. SDC’s platform competes with the traditional brick-and-mortar approach. As a result, Ms. Nguyen’s husband is affiliated with a practice that competes with SDC, so Ms. Nguyen has an interest in harming SDC, which she did with the Reports.

338. Tenth, generally accepted journalism standards encourage reporters and producers to be transparent with viewers and readers. NBC violated this standard by failing to disclose to viewers and readers that it was not publishing an objective, fact-based report about SDC. Instead, NBC misled viewers and readers into believing that the Reports were the result of a balanced, fact-driven “investigation,” when they were not.

339. Eleventh, generally accepted journalism standards encourage reporters and producers to admit and correct mistakes. NBC violated this standard by failing to admit and correct the factual inaccuracies in the Reports after being informed of them by SDC, and refusing to retract the Reports.

340. NBC's violation of generally accepted journalism standards demonstrates the intentionality of NBC's actions. NBC's reckless disregard for the truth and purposeful avoidance of the truth were not the result of mistake or ignorance. NBC knew what it should do during the investigation and reporting of this subject. NBC knew what it should do based on generally accepted journalism standards. NBC intentionally and knowingly ignored those standards.

D. NBC acted with actual malice in publishing each category of false statements and implications.

341. This sub-section includes some, but not all, of the allegations relating to actual malice for each category of false statements and implications discussed above. The allegations above in sub-sections VI(A), (B) and (C) apply to all of the categories of false statements and implications, and identify the reasons that NBC acted with actual malice with respect to each category of false statement and implication discussed above. The allegations in this sub-section should not be read as limiting the applicability of sub-sections VI(A), (B) and (C) to all categories of false statements and implications.

1. NBC acted with actual malice when stating that treatment using SDC's platform caused health and physical problems.

342. NBC falsely stated that treatment using SDC's platform caused health and physical problems. NBC knew that these statements were factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A)⁶;

⁶ Appendices A to U include excerpts from the information provided and made available to NBC prior to the publication of the Reports. NBC knew its statements were false and misleading based on the information summarized in the appendices.

- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- d. Treatment using SDC's teledentistry platform is safe (Appendix D);
- e. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- f. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- g. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- h. "Patient" complaints about treatment are not always credible and must be verified (Appendix H);
- i. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- j. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K);
- k. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- l. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N);
- m. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);
- n. Only a small percentage of patients raise clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform (Appendix P);

- o. The percentage of patients raising clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform is far less than the percentage of patients who raise clinical issues after being treated in a brick-and-mortar office (Appendix Q);
- p. The vast majority of patients treated using SDC's teledentistry platform have a favorable experience with SDC and their SDC-affiliated doctors (Appendix R);
- q. SDC complies with the AAO guidelines regarding patient releases containing confidentiality provisions (Appendix S); and
- r. Patients are only asked to sign a form of general release with a confidentiality provision as part of a settlement agreement if they are seeking compensation outside of SDC's refund policy (Appendix U).

343. Moreover, NBC acted with reckless disregard when it falsely stated that treatment using SDC's platform caused health and physical problems. Among other things, NBC failed to verify or corroborate the statements made by Dr. Kau regarding SDC and the treatment provided by SDC-affiliated doctors. NBC failed to verify or corroborate the statements made by Female Patient and Male Patient. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate claims by "unidentified patients" regarding their alleged treatment by SDC-affiliated doctors. NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

344. And, NBC purposefully avoided learning the truth about whether treatment using SDC's platform caused health and physical problems. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe, efficacious, and does not cause the types of harm discussed in the Reports; (b) refusing to interview Professor Wright, who would have explained that treatment using SDC's

platform is safe and consistent with federal regulations; and, (c) refusing to interview numerous satisfied patients who would have affirmed that treatment using SDC's platform is safe and did not cause the type of harm discussed in the Reports.

2. NBC acted with actual malice when stating that treatment using SDC's platform can cause permanent injuries and omitting material facts to falsely imply that using SDC's platform can cause permanent injuries.

345. NBC falsely stated that treatment using SDC's platform can cause permanent injuries and omitted material facts to falsely imply that using SDC's platform can cause permanent injuries. NBC knew that these statements were factually inaccurate and materially misleading based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- d. Treatment using SDC's teledentistry platform is safe (Appendix D);
- e. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- f. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- g. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- h. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- i. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to

determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K);

- j. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- k. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N);
- l. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);
- m. Only a small percentage of patients raise clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform (Appendix P);
- n. The percentage of patients raising clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform is far less than the percentage of patients who raise clinical issues after being treated in a brick-and-mortar office (Appendix Q); and
- o. The vast majority of patients treated using SDC's teledentistry platform have a favorable experience with SDC and their SDC-affiliated doctors (Appendix R).

346. Moreover, NBC acted with reckless disregard when it falsely stated that treatment using SDC's platform can cause permanent injuries and omitted material facts to falsely imply that using SDC's platform can cause permanent injuries. Among other things, NBC failed to verify or corroborate the statements made by Dr. Kau regarding SDC and the treatment provided by SDC-affiliated doctors. NBC failed to verify or corroborate the statements made by Female Patient and Male Patient. NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients.

347. And, NBC purposefully avoided learning the truth about whether treatment using SDC's platform can cause permanent injuries. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe, efficacious, and does not cause the types of harm discussed in the Reports; (b) refusing to interview Professor Wright, who would have explained that treatment using SDC's platform is safe; and (c) refusing to interview numerous satisfied former patients who would have affirmed that treatment using SDC's platform is safe and did not cause the type of harm discussed in the Reports.

3. NBC acted with actual malice when omitting material facts to create a false impression regarding the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform.

348. NBC omitted material facts to create a false impression regarding the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform. NBC knew that these statements were materially misleading based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- c. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- d. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- e. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to

ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);

- f. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- g. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- h. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K); and
- i. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L).

349. Moreover, NBC acted with reckless disregard when it omitted material facts to create a false impression regarding the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

350. And, NBC purposefully avoided learning the truth about the treatment received by patients from SDC-affiliated doctors using SDC's platform. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have told NBC about the treatment provided by SDC-affiliated doctors using SDC's platform and degree of doctor involvement; and (b) refusing to interview numerous satisfied patients who would have told NBC about the thoroughness of the treatment process using SDC's platform and degree of doctor involvement.

4. NBC acted with actual malice when stating that treatment using SDC's platform injured Female Patient.

351. NBC falsely stated that treatment using SDC's platform injured Female Patient. NBC knew these statements were factually inaccurate based on the information SDC provided and made available to NBC prior to its publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform is safe (Appendix D);
- d. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- e. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- f. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- g. "Patient" complaints about treatment are not always credible and must be verified (Appendix H);
- h. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- i. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- j. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K);

- k. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- l. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N); and
- m. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O).

352. Moreover, NBC acted with reckless disregard when it falsely stated that treatment using SDC's platform injured Female Patient. Among other things, NBC failed to verify or corroborate the statements made by Female Patient.

353. And, NBC purposefully avoided learning the truth about whether treatment using SDC's platform injured Female Patient. NBC purposefully avoided learning the truth by refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe, efficacious, and does not cause the types of harm discussed in the Reports.

5. NBC acted with actual malice when stating that treatment using SDC's platform injured Male Patient.

354. NBC falsely stated that treatment using SDC's platform injured Male Patient. NBC knew that these statements were factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform is safe (Appendix D);

- d. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- e. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- f. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- g. "Patient" complaints about treatment are not always credible and must be verified (Appendix H);
- h. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- i. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- j. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K);
- k. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- l. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N); and
- m. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O).

355. Moreover, NBC acted with reckless disregard when it falsely stated that treatment using SDC's platform injured Male Patient. Among other things, NBC failed to verify or corroborate the statements made by Male Patient.

356. And, NBC purposefully avoided learning the truth about whether treatment using SDC's platform injured Male Patient. NBC purposefully avoided learning the truth by refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe, efficacious, and does not cause the types of harm discussed in the Reports.

6. NBC acted with actual malice when stating that patients must be protected from treatment using SDC's platform.

357. NBC falsely stated that patients must be protected from treatment using SDC's platform. NBC knew that these statements were factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- d. Treatment using SDC's teledentistry platform is safe (Appendix D);
- e. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- f. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- g. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- h. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- i. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N);

- j. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);
- k. Only a small percentage of patients raise clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform (Appendix P);
- l. The percentage of patients raising clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform is far less than the percentage of patients who raise clinical issues after being treated in a brick-and-mortar office (Appendix Q);
- m. The vast majority of patients treated using SDC's teledentistry platform have a favorable experience with SDC and their SDC-affiliated doctors (Appendix R); and
- n. Federal and state legislators critical of SDC have a financial and/or political interest to criticize SDC (Appendix T).

358. Moreover, NBC acted with reckless disregard when it falsely stated that patients must be protected from treatment using SDC's platform. Among other things, NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

359. And, NBC purposefully avoided learning the truth about whether patients must be protected from treatment using SDC's platform. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe, efficacious, and complied with state and federal regulations; and (b) refusing to interview Professor Wright, who would have explained that treatment using SDC's platform is safe and consistent with federal regulations.

7. NBC acted with actual malice when omitting material facts to falsely imply that treatment using SDC's platform violates state and federal regulations.

360. NBC omitted material facts to falsely imply that treatment using SDC's platform violates state and federal regulations. NBC knew that these statements were factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- c. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- d. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- e. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- f. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- g. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K);
- h. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L);
- i. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);

- j. SDC complies with the AAO guidelines regarding patient releases containing confidentiality provisions (Appendix S);
- k. Federal and state legislators critical of SDC have a financial and/or political interest to criticize SDC (Appendix T); and
- l. Patients are only asked to sign a form of general release with a confidentiality provision as part of a settlement agreement if they are seeking compensation outside of SDC's refund policy (Appendix U).

361. Moreover, NBC acted with reckless disregard when it omitted material facts to falsely imply that treatment using SDC's platform violates state and federal regulations. Among other things, NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors when using SDC's platform. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

362. And, NBC purposefully avoided learning the truth about whether treatment using SDC's platform violates government regulations. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe and complied with state and federal regulations; and (b) refusing to interview Professor Wright, who would have explained that treatment using SDC's platform is safe and consistent with federal regulations.

- 8. NBC acted with actual malice when stating that treatment using SDC's platform is "do it yourself" dentistry and omitting material facts to falsely imply that treatment using SDC's platform is "do it yourself" dentistry.**

363. NBC falsely stated that treatment using SDC's platform is "do it yourself" dentistry and omitted material facts to falsely imply that treatment using SDC's platform is "do it yourself"

dentistry. NBC knew these statements were factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- c. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- d. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- e. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- f. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- g. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- h. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K); and
- i. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L).

364. Moreover, NBC acted with reckless disregard when it falsely stated that treatment using SDC's platform is "do it yourself" dentistry and omitted material facts to falsely imply that treatment using SDC's platform is "do it yourself" dentistry. Among other things, NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-

affiliated doctors when using SDC's platform. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

365. And, NBC purposefully avoided learning the truth about whether treatment using SDC's platform is "do it yourself" dentistry. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have told NBC about the thoroughness of the treatment process using SDC's platform and degree of doctor involvement; and (b) refusing to interview numerous satisfied patients who had been treated by SDC-affiliated doctors and would have told NBC about the thoroughness of the treatment process using SDC's platform and degree of doctor involvement.

9. NBC acted with actual malice when stating that SDC-affiliated doctors are not involved in treating patients and omitting material facts to create a false impression that SDC-affiliated doctors are not involved in treating patients.

366. NBC falsely stated that SDC-affiliated doctors are not involved in treating patients and omitted material facts to create a false impression that SDC-affiliated doctors are not involved in treating patients. NBC knew that these statements were factually inaccurate and misleading based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- c. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);

- d. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- e. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- f. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- g. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- h. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K); and
- i. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L).

367. Moreover, NBC acted with reckless disregard when it falsely stated that SDC-affiliated doctors are not involved in treating patients and omitted material facts to create the false impression that SDC-affiliated doctors are not involved in treating patients when using SDC's platform. Among other things, NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

368. And, NBC purposefully avoided learning the truth about whether SDC-affiliated doctors are involved in treating patients when using SDC's platform. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have told NBC about the thoroughness of the treatment process using SDC's platform and degree of doctor involvement;

and (b) refusing to interview numerous satisfied patients who would have told NBC about the thoroughness of the treatment process using SDC's platform and degree of doctor involvement.

10. NBC acted with actual malice when implying that treatment through SDC's platform is not safe for patients.

369. NBC falsely implied that treatment through SDC's platform is not safe for patients. NBC knew that this implication was factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- d. Treatment using SDC's teledentistry platform is safe (Appendix D);
- e. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- f. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- g. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- h. "Patient" complaints about treatment are not always credible and must be verified (Appendix H);
- i. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- j. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);

- k. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N);
- l. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);
- m. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L);
- n. Only a small percentage of patients raise clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform (Appendix P);
- o. The percentage of patients raising clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform is far less than the percentage of patients who raise clinical issues after being treated in a brick-and-mortar office (Appendix Q);
- p. The vast majority of patients treated using SDC's teledentistry platform have a favorable experience with SDC and their SDC-affiliated doctors (Appendix R);
- q. SDC complies with the AAO guidelines regarding patient releases containing confidentiality provisions (Appendix S);
- r. Federal and state legislators critical of SDC have a financial and/or political interest to criticize SDC (Appendix T); and
- s. Patients are only asked to sign a form of general release with a confidentiality provision as part of a settlement agreement if they are seeking compensation outside of SDC's refund policy (Appendix U).

370. Moreover, NBC acted with reckless disregard when it falsely implied that treatment through SDC's platform is not safe for patients. Among other things, NBC failed to verify or corroborate the statements made by Dr. Kau regarding SDC and the treatment provided by SDC-affiliated doctors when using SDC's platform. NBC failed to verify or corroborate the statements made by Female Patient and Male Patient. NBC failed to verify or corroborate claims by "unidentified patients" regarding their alleged treatment by SDC-affiliated doctors. NBC failed to

verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors when using SDC's platform. NBC failed to verify or corroborate its statements and implications regarding the thoroughness of, and doctor involvement in, the treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

371. And, NBC purposefully avoided learning the truth about whether treatment through SDC's platform is safe for patients. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC's platform is safe, efficacious, and does not cause the types of harm discussed in the Reports; (b) refusing to interview Professor Wright, who would have explained that treatment using SDC's platform is safe; and (c) refusing to interview numerous satisfied patients who would have affirmed that treatment using SDC's platform is safe and did not cause the type of harm discussed in the Reports.

11. NBC acted with actual malice when implying that patients who are using SDC's platform are engaged in "do it yourself" dentistry.

372. NBC falsely implied that patients who are using SDC's platform are engaged in "do it yourself" dentistry. NBC knew that this implication was factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- c. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);

- d. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- e. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- f. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- g. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- h. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K); and
- i. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L).

373. Moreover, NBC acted with reckless disregard when it falsely implied that patients who are using SDC's platform are engaged in "do it yourself" dentistry. Among other things, NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors when using SDC's platform. NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

374. And, NBC purposefully avoided learning the truth about whether patients who are using SDC's platform are engaged in "do it yourself" dentistry. NBC purposefully avoided learning the truth by: (a) refusing to interview Dr. Sulitzer, who would have told NBC about the

treatment process using SDC's platform and degree of doctor involvement; and (b) refusing to interview numerous satisfied former patients who would have told NBC about the treatment process using SDC's platform and degree of doctor involvement.

12. NBC acted with actual malice when implying that treatment using SDC's platform is not effective for patients.

375. NBC falsely implied that treatment using SDC's platform is not effective for patients. NBC knew that this implication was factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC's teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);
- b. Clear aligners prescribed by SDC-affiliated doctors are safe (Appendix B);
- c. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- d. Treatment using SDC's teledentistry platform is safe (Appendix D);
- e. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- f. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- g. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- h. "Patient" complaints about treatment are not always credible and must be verified (Appendix H);
- i. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);

- j. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- k. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N);
- l. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);
- m. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L);
- n. Only a small percentage of patients raise clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform (Appendix P);
- o. The percentage of patients raising clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform is far less than the percentage of patients who raise clinical issues after being treated in a brick-and-mortar office (Appendix Q);
- p. The vast majority of patients treated using SDC's teledentistry platform have a favorable experience with SDC and their SDC-affiliated doctors (Appendix R);
- q. SDC complies with the AAO guidelines regarding patient releases containing confidentiality provisions (Appendix S);
- r. Federal and state legislators critical of SDC have a financial and/or political interest to criticize SDC (Appendix T); and
- s. Patients are only asked to sign a form of general release with a confidentiality provision as part of a settlement agreement if they are seeking compensation outside of SDC's refund policy (Appendix U).

376. Moreover, NBC acted with reckless disregard when it falsely implied that treatment using SDC's platform is not effective for patients. Among other things, NBC failed to verify or corroborate the statements made by Dr. Kau regarding SDC and the treatment provided by SDC-affiliated doctors when using SDC's platform. NBC failed to verify or corroborate the statements

made by Female Patient and Male Patient. NBC failed to verify or corroborate claims by “unidentified patients” regarding their alleged treatment by SDC-affiliated doctors. NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors when using SDC’s platform. NBC failed to verify or corroborate its statements and implications regarding the thoroughness of, and doctor involvement in, the treatment of patients. NBC failed to verify or corroborate its statements and implications regarding the effectiveness of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate its statements and implications regarding SDC’s compliance with state and federal regulations governing the practice of dentistry.

377. And, NBC purposefully avoided learning the truth about whether treatment through SDC’s platform is effective for patients. NBC purposefully avoided learning the truth by (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC’s platform is safe, efficacious, and does not cause the types of harm discussed in the Reports; (b) refusing to interview Professor Wright, who would have explained that treatment using SDC’s platform is effective and safe; and (c) refusing to interview numerous satisfied patients who would have affirmed that treatment using SDC’s platform is effective, safe, and did not cause the type of harm discussed in the Reports.

13. NBC acted with actual malice when it implied that SDC is a dishonest company.

378. NBC falsely implied that SDC is a dishonest company. NBC knew this implication is factually inaccurate based on the information SDC provided and made available to NBC prior to publication of the Reports. Based on this information, NBC knew the following:

- a. SDC-affiliated doctors who use SDC’s teledentistry platform are responsible for all clinical assessments, diagnoses, prescriptions, and for overseeing every step of patient care and treatment (Appendix A);

- b. Treatment using SDC's teledentistry platform complies with state and federal regulations (Appendix C);
- c. Treatment using SDC's teledentistry platform is safe (Appendix D);
- d. Treatment using SDC's teledentistry platform requires SDC-affiliated doctors to follow the same standard of care as treatment in a brick-and-mortar setting (Appendix E);
- e. Treatment by SDC-affiliated doctors using SDC's teledentistry platform involves multiple steps to ensure proper care (Appendix F);
- f. SDC-affiliated doctors using SDC's teledentistry platform have the right to (and do) request additional information and clearances from patients to ensure proper treatment whenever they deem it proper in their sole and absolute clinical judgment (Appendix G);
- g. "Patient" complaints about treatment are not always credible and must be verified (Appendix H);
- h. The treatment patients receive from SDC-affiliated doctors using SDC's teledentistry platform is not "do it yourself" dentistry (Appendix I);
- i. Patients receiving treatment using SDC's teledentistry platform can raise concerns with their SDC-affiliated doctor and SDC facilitates that communication (Appendix J);
- j. SDC-affiliated doctors using SDC's teledentistry platform receive the same level of information as they would in a brick-and-mortar setting to determine whether a patient is an appropriate candidate for clear-aligner treatment (Appendix K);
- k. SDC-affiliated doctors are licensed to practice in the state where the patient resides (Appendix L);
- l. The issues that may arise during treatment using SDC's teledentistry platform are the same issues that arise with treatment in a brick-and-mortar office (Appendix M);
- m. SDC-affiliated doctors use SDC's teledentistry platform to treat mild to moderate malocclusion, as opposed to cases that may require more extensive treatment options, which are referred to traditional practices (Appendix N);
- n. SDC-affiliated doctors do not treat patients using SDC's teledentistry platform if the patient is deemed by the SDC-affiliated doctor reviewing that patient's file not to be a proper candidate for such treatment (Appendix O);

- o. Only a small percentage of patients raise clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform (Appendix P);
- p. The percentage of patients raising clinical issues with the treatment they receive from SDC-affiliated doctors using the SDC teledentistry platform is far less than the percentage of patients who raise clinical issues after being treated in a brick-and-mortar office (Appendix Q);
- q. The vast majority of patients treated using SDC's teledentistry platform have a favorable experience with SDC and their SDC-affiliated doctors (Appendix R);
- r. SDC complies with the AAO guidelines regarding patient releases containing confidentiality provisions (Appendix S);
- s. Federal and state legislators critical of SDC have a financial and/or political interest to criticize SDC (Appendix T); and
- t. Patients are only asked to sign a form of general release with a confidentiality provision as part of a settlement agreement if they are seeking compensation outside of SDC's refund policy (Appendix U).

379. Moreover, NBC acted with reckless disregard when it falsely implied that SDC is a dishonest company. Among other things, NBC failed to verify or corroborate the statements made by Dr. Kau regarding SDC and the treatment provided by SDC-affiliated doctors. NBC failed to verify or corroborate the statements made by Female Patient and Male Patient. NBC failed to verify or corroborate claims by "unidentified patients" regarding their alleged treatment by SDC-affiliated doctors. NBC failed to verify or corroborate its statements and implications regarding the safety of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate the statements and implications regarding the thoroughness of, and doctor involvement in, treatment of patients. NBC failed to verify or corroborate its statements and implications regarding the effectiveness of treatment by SDC-affiliated doctors. NBC failed to verify or corroborate its statements and implications regarding SDC's compliance with state and federal regulations governing the practice of dentistry.

380. And, NBC purposefully avoided learning the truth about whether SDC is an honest company. NBC purposefully avoided learning the truth by (a) refusing to interview Dr. Sulitzer, who would have explained that treatment using SDC’s platform is safe, does not cause the types of harm discussed in the Reports, is thorough, is doctor-directed, and complied with federal and state regulations; (b) refusing to interview Professor Wright, who would have explained that treatment using SDC’s platform is safe and consistent with state and federal regulations; and (c) refusing to interview numerous satisfied former patients who would have affirmed that treatment using SDC’s platform is safe, did not cause the type of harm discussed in the Reports, is thorough, and is doctor-directed.

VII. NBC’S REPORTS CAUSED SIGNIFICANT DAMAGE TO SDC

381. NBC used a multipronged attack on SDC to maximize the dissemination of its false and defamatory report regarding SDC. As one of the “big three” commercial broadcast networks, along with ABC and CBS, NBC routinely reaches millions of viewers through its news programs. NBC also reaches individuals in a variety of other ways. In this case, NBC used its highest rated prime time news program (Nightly News with Lester Holt), its website, its own social media platforms, the social media platforms of individual reporters and producers, and its network of affiliated stations. The use by NBC of its digital and social media platforms, along with its use of its affiliates, generated additional awareness of its news report on SDC and additional harm.

382. Indeed, NBC strategically used social media to make sure to aim its reporting at consumers, prospective patients, investors, and others interested in SDC. Take the below post from the investigative reporter, Ms. Nguyen, for example:



383. NBC's multipronged attack ensured that consumers, prospective patients, investors, and others interested in SDC across the country, viewed and/or read its Reports. Indeed, NBC intentionally targeted individuals who were current and potential patients of SDC's platform—that is, individuals who were using or likely to use SDC's platform for treatment of their mild to moderate malocclusion.

384. The Reports were also republished by other news organizations and across social media. NBC knew that its Reports would be republished and further disseminated by others. NBC encouraged the republication by its affiliates. And, on information and belief, NBC took steps to encourage other news organizations—affiliated and otherwise—to republish the Reports. The

further republication of the Reports, for which NBC is responsible, caused additional damage to SDC.

385. Not surprising, given this saturation, the Reports led to a substantial decline in SDC's stock price, damaged SDC's business reputation, cost SDC revenue, caused harm to SDC's business, and caused SDC to spend money on public relations to mitigate the damage. In total, the Reports have caused SDC over \$950 million in current and future damages.

A. NBC's Reports harmed SDC's business and reputation.

386. NBC's attack had a devastating impact on SDC and its business reputation. SDC has been an industry pioneer and leader in teledentistry platforms. SDC has made significant investments to build a reputable business and network of hundreds of licensed dentists and orthodontists who treat patients using SDC's platform. SDC has revolutionized the oral care industry and democratized access to safe, affordable, and convenient care to straighten teeth. In contrast, NBC cast SDC as a company engaged in the deceptive, harmful, and unsafe practice of dentistry. NBC's unfounded attack caused the following injuries.

1. NBC's defamatory report caused SDC's stock price to decline.

387. It is well recognized that a corporation has a business reputation (and value) that can be damaged by the creation of negative opinions held by its business partners, consumers, investors, the public, and government regulators. One way in which a company's reputation in the business world can be measured is its stock price. NBC intended to, and in fact did, harm SDC's trading price. And, to eliminate any doubt as to NBC's motivation for the Reports, Ms. Nguyen celebrated the news that the Reports had caused SDC's stock price to decline.

388. On the day after the Reports, February 14, 2020, SDC's stock price plunged. The price of SDC common stock declined by \$2.50 per share, or more than 15%, from a closing price of \$15.33 per share on February 13, 2020 to a closing price of \$12.83 per share on February 14,

2020, with over 23 million shares traded.⁷ This decline represented a drop of over \$950 million in market capitalization.⁸

389. The decline in the price of SDC common stock was the direct result of the false and misleading statements, and false implications, made in the Reports. The timing and magnitude of the price decline negates any inference that it was caused by changed market conditions, macroeconomic or industry factors, or other facts unrelated to the defamatory aspects of the Reports.⁹ SDC's economic loss, *i.e.*, damage, resulted from the false and defamatory statements and implications about SDC made by NBC.

390. NBC, as well as other news organizations and stock analysts, attributed the stock price decline on February 14, 2020 to the Reports. For example:

- a. On February 14, *CNBC The Exchange*¹⁰ broadcast a Rapid Fire segment with the headline, “**SmileDirectClub Sinks on NBC News Investigative Report.**” That segment began by stating, “First up, we wanted to show shares of SmileDirectClub. Look at this price action today. It is **sinking about 15 percent after an NBC News report** revealed complaints guys from hundreds of unhappy users. They talked about pain, broken teeth, even nerve damage.” The segment also shows a number of graphics attributing the SDC stock price drop to NBC (emphasis added)

⁷ SDC's stock price closed on February 12, 2020, the day before the NBC nightly news report on SDC, at \$14.91 per share.

⁸ Market capitalization is the aggregate market value of a company represented in dollar amount. It represents the “market” value of a company, and is computed based on the current market price of shares and the total number of outstanding shares.

⁹ At all relevant times, the market for SDC common stock was efficient for a number of reasons, such as the following, among others: (a) SDC common stock met the requirements for listing and was listed and actively traded on the NASDAQ exchange, a highly efficient and automated market; (b) the company has over 70 million shares of common stock in its public float on the NASDAQ; (c) as a regulated issuer, SDC filed periodic reports with the SEC; (d) SDC regularly communicated with public investors via established market communications mechanisms, including regular discussions with securities analysts covering the company, as well as regular disseminations of press releases on major newswire services, the Internet, and other wide-ranging public disclosures; and (e) unexpected material news about SDC was rapidly reflected in and incorporated into the price of SDC common stock since its offering.

¹⁰ *CNBC's The Exchange* is a newsroom-based program for today's investor. The show's website says that it focuses on in-depth reporting around the most important and interesting stories for today's markets and investors.



- b. On February 14, *Bloomberg Markets the Close* broadcast that SDC was “also down 17% today on that NBC report.” (emphasis added)
- c. On February 14, *Fox Business* published an online article and video, “SmileDirectClub teeth-straightening kits costing consumers more, At-home teeth straightening kits are affordable but come at a cost for some who have experienced issues.” After mentioning the NBC News report, the article notes that **the company’s stock was “down 16.31 percent on the news Friday.”** (emphasis added)
- d. On February 14, *The Street* published an online article and video, “What to Watch Before the Close Friday: SmileDirectClub, Tesla and Coronavirus.” The article includes a segment, “SmileDirectClub’s Shares are Sinking in Intraday Trading.” It goes on: “**And, finally, let’s talk about what’s sending SmileDirectClub (SDC) shares sinking. NBC Nightly News with Lester Holt ran a report on SmileDirectClub Thursday. The segment included accounts from several customers, who claimed that their teeth were damaged by SmileDirect Club’s aligners. . . . Shares were down over 15% ahead of the closing bell.**” (emphasis added)
- e. On February 14, *The Motley Fool*¹¹ published an online article, “Why SmileDirectClub Shares Stumbled 16.3% Today.” The article began, “**What happened . . . [a]n NBC News report** that the Better Business Bureau has received over 1,800 complaints about SmileDirectClub

¹¹ *The Motley Fool* is an online subscription service for investment recommendations, stock research, and analysis.

(NASDAQ:SDC) **caused shares in the healthcare company to tumble 16.3% on Friday.**” (emphasis added)

- f. On February 14, *Investor Place* published an online article on the stock market that day and noted that SDC had **“plunged more than 15% following an NBC news report** highlighting some customers’ problems with the company’s dental aligners.” (emphasis added)
- g. On February 14, *Benzinga*¹² published an online article, “50 Stocks Moving in Friday’s Mid-Day Session.” The article identified SDC as one of the losers (vs. gainers), and stated **“SDC 16.7% fell 11.5% to \$13.56 after NBC issued a bearish NBC Nightly News story on the company.”** (emphasis added)
- h. On February 14, *USA Today* published an article, “Is SmileDirectClub safe? Teeth straightening service slams NBC report on ‘painful problems.’” The article began with the question: “Is SmileDirectClub’s teeth-straightening service medically sound?” It then noted that NBC called that into question with a report and observed that **“[i]nvestors appear to be unsettled by the report” and the stock “fell more than 14% in the morning trading on Friday.”** (emphasis added)
- i. On February 16, 2020, *Yahoo! Finance* published an online article and video, “SmileDirectClub has growing customer complaints.” The report stated, **“SmileDirectClub slid 15% Friday after an NBC report indicated that the company is harming its consumers.”** The report continued: “That SmileDirectClub. Big selloff there. NBC had a story coming out that some customers have been having issues with the appliances and having damage to their teeth. . . . Yeah overnight. This is what happens you know. SmileDirectClub their business was built on the TV and marketing so you have to question is it going to die on the TV because of a report like this. It is very unclear right now. Very unclear.” (emphasis added)
- j. On February 17, 2020, *Grit Daily* published an online article, “SmileDirectClub is Pissed at NBC.” The article stated, **“Most recently NBC took aim at SmileDirectClub with an investigative report causing the company’s stock to drop significantly.”** It continued, “NBC ran a report questioning the safety of SmileDirectClub’s aligners” and noted that **“[a]fter NBC ran their report, SDC’s stock took a 16.3% nosedive.”** (emphasis added)

¹² Benzinga is a financial media outlet for investors.

391. By the end of the day on February 14, 2020, it was clear to many who follow and analyze stock price movements that NBC's Reports about SDC caused SDC's stock to plummet overnight. The Reports damaged the public's view of SDC and investors became worried about the long-term harm it would cause to the company, its reputation, and ultimately its revenue stream.

392. In addition to the dive that SDC's stock price took on February 14, 2020, in response to the defamatory Reports, SDC's stock price continued to decline in the following weeks as a result of the republications of the Reports. For example, SDC's stock price closed on February 20 at \$12.07 per share, and closed on February 26 at \$8.00 per share.

393. The crediting of its own investigative report as the impetus to a plunge in the stock price of SDC by NBC, and specifically Ms. Nguyen, speaks volumes. On February 14, 2020, Sally Shin posted the following on Twitter: "Smile Direct Club shares plunge after @NBCNews investigations by @VickyNguyenTV and @LaurNBC," and she included a link to the nbcnews.com online video report of the NBC Nightly News broadcast. Ms. Nguyen retweeted the post after "liking" it, thereby showing her approval, appreciation, and enjoyment that the Reports were being credited for causing SDC's stock price to decline. (Ex. 2 at 7.)

394. The decline in SDC's stock price hurt SDC and its shareholders. The decline in SDC's stock price and market capitalization as a result of the Reports also reflects the damage done to SDC's business value and reputation (discussed more below). The defamatory statements in the Reports caused this damage and Ms. Nguyen's actions after the Reports were published make clear that NBC intended to cause this damage to SDC when publishing the Reports.

2. NBC's Reports caused damage to SDC's business reputation.

395. The false and defamatory statements and implications by NBC severely injured the business reputation of SDC. The sample of contemporaneous reactions by news organizations and investors above, paragraphs 390(a)–(j), shows that the Reports diminished the esteem, respect,

goodwill, and confidence in which SDC was held, and excited adverse, derogatory, and unpleasant feelings and opinions toward the company.

396. The Reports not only prejudiced SDC in the conduct of its business, but they have and will continue to deter others from dealing with SDC. The same articles set forth above include descriptions of the issues presented by the Reports, such as:

- a. A statement on *CNBC The Exchange* television broadcast, “Whether it’s true or representative or not, the marketing impact of this for people who are deciding whether to spend this much money or use traditional orthodontistry, I’m just saying, you know what? I’d rather have slightly crooked teeth, than to have **that** happen.” (emphasis added)
- b. A statement on *Yahoo! Finance The Final Round*, “When Lester Holt is all of a sudden saying you know SmileDirectClub is a company made out of . . . it makes everyone kind of crap their pants a little bit. I think it’s a very interesting time ahead for the company. . . . When you get to crossing over into middle America when somebody is trying to decide do I go to the orthodontist or do I do SmileDirectClub but NBC News.”

397. Following publication of the Reports, current and potential users of SDC’s platform contacted SDC with various concerns caused by the Reports, and many cancelled their treatment due to the defamatory statements and implications in the Reports. For example, in the days following the Reports, SDC customers made the following comments:

- a. Customer A said that they were concerned about their own treatment plan after the negative news coverage. The next day, they decided to return their aligners.¹³
- b. Customer B said they were concerned that there was a story on the nightly news about SDC not being legitimate.
- c. Customer C said that they had fear from the NBC interview. The customer noted that they were not quite sure if the treatment would be worth it, and wished they could cancel and go with someone like Invisalign.

¹³ SDC is referring to the customers anonymously due to confidentiality obligations to the patients and SDC-affiliated doctors. SDC can provide the Court with the identity of the customers, to the extent necessary, as part of an in-camera review. SDC can also provide the identity of the customers to Defendants following entry of a protective order and necessary waivers and patient-related protections.

- d. Customer D said that they did not want to proceed with treatment after the story they saw on the news. The customer said that they were hesitant to start their program because they did not want to get headaches or have an adverse reaction.
- e. Customer E said that they recommended SDC to a few friends until the news story came out on NBC.
- f. Customer F called to cancel their treatment and provided NBC News and health concerns as the reason.
- g. Customer G called to cancel their treatment and provided the bad NBC News report as the reason.
- h. Customer H said: "I just saw something on the news where you guys do a little run around game. Y'all have made the news."
- i. Customer I said: "I was reading the article on your company and I got screwed."
- j. Customer J said: "[A]fter reading the article, I'm saying I would feel more comfortable not moving forward."
- k. Customer K said: "You guys were on the news, this is why people will start a law suit against you."
- l. Customer N said: "I just want to cancel, I saw you on the news."
- m. Customer O said: "I'm concern[ed] for what is on the news."
- n. Customer P said: "[Y]ou got a terrible report, of your service and it was on the news that we can[']t trust the service, I want to cancel."
- o. Customer Q said: "It was in the NBC news, saying that [it] is not proper, anyway I want my money back."
- p. Customer R said: "And then I saw on the news that you guys were being under investigation I was like: 'No I gotta stop this right now, I don't wanna be a part of it.'"
- q. Customer S said: "It was on the news, we just don't want to chance it."
- r. Customer T said: "Then I read a news tape article, where SmileDirectClub was in a deception of an investigation."
- s. Customer U said: "Now that you guys have been on the news stating how bad you are."

- t. Customer V said: “I saw something recently on the news, and I want to cancel.”
- u. Customer W said: “From what I’ve been hearing on the news and stuff, it could cause further damage so I’m almost nervous to even continue at all, so that’s why I wanted to cancel and get my money back.”

398. Individuals who posted on social media also called into question the trustworthiness and integrity of SDC after watching and reading the Reports. Individuals made comments like:

- a. “You should consider watching this before trusting SmileDirectClub.”
- b. “They are being investigated by the news due to causing teeth problems. I wouldn’t invest in this.”
- c. “Nope. . . . Big scam. Bad outcomes. NFW [(no [expletive] way)].”
- d. “This is a Sca[m]. [J]ust seen the news. It [is] messing up [peoples’] teeth.”
- e. “NBC News did a fabulous story about this scam company. How many pending lawsuits—hundreds!”
- f. “Before choosing Smile Direct Club, this is worth watching.”
- g. “Be careful.”

399. The type of comments above show the clear aspersion that NBC’s reporting cast on the honesty, integrity, and standing of SDC, which operates in an area where individuals place their trust in its process, and in the hands of the SDC-affiliated doctors who use its platform to provide safe and effective patient care. CNBC’s *The Exchange* television broadcast recognized the impact of the type of false allegations made in NBC’s reporting:

“Look that’s always the case when any of us who have done investigative piece. The company always says well why did you choose to focus on the negative. You should have focused on the people that had a positive experience. **The difference with this is a consumer company is that you are dealing with people’s health.** And that’s where you get into an issue where we’ve been hearing these warnings from orthodontists that, granted, do have a financial incentive to attack this company, **but these are serious claims. They are numerous and I think when you go to the fundamental,** are people, whether it’s sort of true representative or not, the marketing impact of this for people that are deciding whether to spend this much money **[it’s devastating]** or use traditional orthodontists. I’d just say, you know

what, **I'd rather have slightly crooked teeth than to have that happen.**" (emphasis added)

400. SDC's reputation, including its brand, which encompasses its services and products as well as its integrity, has been damaged by the false and defamatory statements and implications from the Reports. SDC's brand is fundamental to its business success.

B. NBC's Reports harmed SDC's business.

401. SDC's revenue is tied to the number of patients who elect to use its platform for the treatment of mild to moderate malocclusion. SDC is hired by professional corporations established and owned by the SDC-affiliated doctors who seek to engage SDC to use its teledentistry platform. SDC receives a flat monthly payment from these professional corporations for the use of its platform as well as monthly payments from the professional corporations for the clear aligners it sources for them to treat their patients when using SDC's platform. A decline in the number of patients who elect to be treated through SDC's platform leads to a decline in the number of patients treated by these SDC-affiliated doctors and a corresponding decline in the fees SDC receives from these professional corporations.

402. Following publication of the Reports, SDC suffered economic damage as a result of current patients cancelling their treatment and prospective patients not seeking treatment through SDC's teledentistry platform. The cancellation and decline of potential new patients led and will continue to lead to a decline in the fees SDC receives from the professional corporations for the sourcing of clear aligners.

403. Moreover, some brick-and-mortar orthodontic practices, and the associations that protect them, are using the Reports to further defame SDC and persuade patients to use their services, as opposed to being treated by SDC-affiliated doctors using SDC's platform, which has

harmful and will further harm SDC's business. For example, brick-and-mortar orthodontic practices made the following comments on the Facebook page of the AAO about NBC's Reports:

- a. "Frankel Orthodontics and Pediatric Dentistry" wrote: "You get what you pay for. Do it right the first time with a caring doctor, not a greedy company."
- b. "The Smile Team - Dr. Byron T. Smith" wrote: "While SmileDirectClub, the largest at-home dental alignment company, and others promise to leave patients smiling, an NBC News investigation into a growing list of complaints found that this new trend in straightening teeth is leading to painful problems for some people."
- c. "1st Impressions Denver Orthodontics" wrote: "These companies are a nightmare for patients! Be smart and don't be fooled!"
- d. "GLK Orthodontics" wrote: "Orthodontics is a health professional treatment, not a commodity. Irreversible damage can happen. Please share this story to help your family and friends from making a big mistake. If it sounds too good to be true"

404. These are but a few examples. Many brick-and-mortar orthodontic offices have long seen SDC as a direct threat to their revenue stream because SDC's platform allows doctors to treat patients for a fraction of the cost charged by the traditional brick-and-mortar offices providing orthodontic treatment. The Reports gave many of these brick-and-mortar orthodontic offices—including Mitchell, Bartlett and Bell Orthodontics, Arbitman Orthodontics: Howard Beach & Forest Hills, Queens, Sam Kadan DMD, Orthodontist, Advanced Orthodontics: Burien, O'Neill Orthodontics, Misuraca Orthodontics, Parker Orthodontics, Wright Orthodontics, Woodfin Cabassa Orthodontics, Lupi Orthodontics, Morrone, Kaye & Yucha Orthodontics, Dr. Grace Kerr Orthodontics - Cincinnati Invisalign and Braces, Greater Houston Orthodontics, and Danzer Orthodontics and Advanced Orthodontics—new fodder to use in their efforts to persuade prospective patients to forego using SDC's platform and, instead, pay the exorbitant prices they charge.

405. The Reports plainly prejudiced SDC in the conduct of its business. The negative opinions of consumers and the public that resulted from NBC's reporting have and will continue to cause SDC to lose profits. They have had, and will continue to have, a significant impact on SDC's brand.

406. SDC has taken steps to mitigate the negative impact caused by the Reports. Among other things, SDC has increased its spending on public relations and marketing in an effort to minimize the short and long term impact of the Reports. SDC does not have the reach of NBC, so these efforts have had limited success. Nonetheless, SDC would not have incurred increased expenditures relating to public relations and marketing but for the defamatory statements and implications made in the Reports. These increased expenditures create further downward pressure on SDC's profits.

C. NBC's Reports caused a decline in SDC's business value.

407. SDC has also suffered a loss in the value of its business based on the difference between what the actual value of the business was before the Reports and what the value of the business would have been but for the Reports.

408. The decline in SDC's business value as a result of the Reports is demonstrated by (a) the decline in SDC's stock price; (b) the decline in SDC's market capitalization; (c) cancellation of treatment by patients; (d) negative perception of SDC and SDC's platform among prospective patients; (e) a decline in new enrollment for treatment using SDC's platform; and (f) the marketing efforts by SDC's competitors using the Reports to persuade patients to forego treatment using SDC's platform. All of these factors are relevant to the assessment of SDC's business value and all of them evidence how the Reports negatively impacted SDC's business value.

409. Likewise, the short-term and long-term impact on SDC's reputation and brand caused by the Reports has deflated (and will continue to deflate) SDC's business value. SDC

operates in a competitive industry. Consumers' perception of the SDC brand is an important consideration when they determine whether they will use SDC's platform and seek treatment from an SDC-affiliated doctor. SDC's brand value is a critical driver of revenue; and, therefore, a critical driver of business value. The Reports did significant harm to SDC's business value by doing significant harm to SDC's reputation and brand.

410. In total, the Reports have caused more than \$950 million in damage to SDC as a result of its decline in stock price, decline in market capitalization, decline in patients using its platform, decline in revenue, increase in expenses, and decline in business value.

COUNT I

Defamation Against NBC and Nguyen for False Statements that Treatment Using SDC's Platform Caused Health and Physical Problems

411. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

412. Starting on February 13, 2020, Defendants NBC and Nguyen falsely stated that treatment using SDC's platform caused health and physical problems. These false statements are listed in paragraphs 86(a)–(o).

413. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner "Some SmileDirectClub customers report painful problems." (Ex. 4, NBC Broadcast.) The online version of the broadcasted report carries the title "SmileDirectClub promises easy teeth straightening. Some patients report painful problems." (Ex. 1, NBC Online Report.) The online report is titled "'Things didn't feel right': Some SmileDirectClub customers report problems." (*Id.*)

414. Defendant NBC further disseminated and republished the false statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false statements by posting the Reports on social media.

415. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 88–98. The statements are demonstrably false.

416. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

417. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 342–344.

418. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

419. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

420. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT II

Defamation Against NBC and Nguyen for False and Misleading Statements that Treatment Using SDC's Platform Can Cause Permanent Injuries

421. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

422. Starting on February 13, 2020, Defendants NBC and Nguyen falsely stated that treatment using SDC's platform can cause permanent injuries and omitted material facts to falsely imply that using SDC's platform can cause permanent injuries. These false and misleading statements are listed in paragraphs 99(a)–(i). Defendants intended to falsely imply that using SDC's platform can cause permanent injuries, and knew that their statements and omissions would create that false impression.

423. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner "Some SmileDirectClub customers report painful problems." (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title "SmileDirectClub promises easy teeth straightening. Some patients report painful problems." (Ex. 1, NBC Online Report at 1.) The online report is titled "'Things didn't feel right': Some SmileDirectClub customers report problems." (*Id.*)

424. Defendant NBC further disseminated and republished the false and misleading statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further

disseminated and republished the false and misleading statements by posting the Reports on social media.

425. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 101–114. The statements are demonstrably false.

426. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

427. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 345–347.

428. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

429. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

430. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT III

Defamation Against NBC and Nguyen for False and Misleading Statements Regarding the Thoroughness and Extensiveness of Treatment Received by Patients from SDC-affiliated Doctors Using SDC's Platform

431. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

432. Starting on February 13, 2020, Defendants NBC and Nguyen made false statements regarding the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform and omitted material facts to create false impressions regarding the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform. These false and misleading statements are listed in paragraphs 115(a)–(l). Defendants intended to create a false impression regarding the thoroughness and extensiveness of treatment received by patients from SDC-affiliated doctors using SDC's platform, and knew that their statements and omissions would create that false impression.

433. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

434. Defendant NBC further disseminated and republished the false and misleading statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further

disseminated and republished the false and misleading statements by posting the Reports on social media.

435. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 117–128. The statements are demonstrably false.

436. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

437. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 348–350.

438. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

439. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

440. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT IV

Defamation Against NBC and Nguyen for False Statements that Treatment Using SDC's Platform Injured Female Patient

441. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

442. Starting on February 13, 2020, Defendants NBC and Nguyen falsely stated that treatment using SDC's platform injured Female Patient. These false statements are listed in paragraphs 129(a)–(h).

443. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

444. Defendant NBC further disseminated and republished the false statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false statements by posting the Reports on social media.

445. Defendants’ statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 131–140. The statements are demonstrably false.

446. Defendants’ statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform and its clear aligners to be shunned or avoided by industry participants and members of

the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

447. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 351–353.

448. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

449. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

450. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT V

Defamation Against NBC and Nguyen for False Statements that Treatment Using SDC's Platform Injured Male Patient

451. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

452. Starting on February 13, 2020, Defendants NBC and Nguyen falsely stated that treatment using SDC's platform injured Male Patient. These false statements are listed in paragraphs 141(a)–(c).

453. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

454. Defendant NBC further disseminated and republished the false statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false statements by posting the Reports on social media.

455. Defendants’ statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 143–150. The statements are demonstrably false.

456. Defendants’ statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC’s platform and clear aligners, and injured SDC’s business.

457. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant’s actual malice include, but are not limited to, those pled in paragraphs 299–340 and 354–356.

458. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

459. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

460. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT VI

Defamation Against NBC and Nguyen for False Statements that Patients Must Be Protected From Treatment Using SDC's Platform

461. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

462. Starting on February 13, 2020, Defendants NBC and Nguyen falsely stated that patients must be protected from treatment using SDC's platform. These false statements are listed in paragraphs 151(a)–(c).

463. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner "Some SmileDirectClub customers report painful problems." (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title "SmileDirectClub promises easy teeth straightening. Some patients report painful problems." (Ex. 1, NBC Online Report at 1.) The online report is titled "'Things didn't feel right': Some SmileDirectClub customers report problems." (*Id.*)

464. Defendant NBC further disseminated and republished the false statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false statements by posting the Reports on social media.

465. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 153–161. The statements are demonstrably false.

466. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

467. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 357–359.

468. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

469. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

470. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT VII

Defamation Against NBC and Nguyen for False and Misleading Statements Regarding Treatment Using SDC's Platform Violating Government Regulations

471. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

472. Starting on February 13, 2020, Defendants NBC and Nguyen made false statements regarding treatment using SDC's platform violating government regulations and omitted material facts to falsely imply that treatment using SDC's platform violates government regulations. These false and misleading statements are listed in paragraphs 162(a)–(d). Defendants intended to falsely imply that treatment using SDC's platform violates government regulations, and knew that their statements and omissions would create that false impression.

473. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner "Some SmileDirectClub customers report painful problems." (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title "SmileDirectClub promises easy teeth straightening. Some patients report painful problems." (Ex. 1, NBC Online Report at 1.) The online report is titled "'Things didn't feel right': Some SmileDirectClub customers report problems." (*Id.*)

474. Defendant NBC further disseminated and republished the false and misleading statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further

disseminated and republished the false and misleading statements by posting the Reports on social media.

475. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 164–173. The statements are demonstrably false.

476. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

477. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 360–362.

478. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

479. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

480. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT VIII

Defamation Against NBC and Nguyen for False and Misleading Statements that Treatment Using SDC's Platform is "Do It Yourself" Dentistry

481. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

482. Starting on February 13, 2020, Defendants NBC and Nguyen made false statements regarding the treatment using SDC's platform being "do it yourself" dentistry and omitted material facts to falsely imply that treatment using SDC's platform is "do it yourself" dentistry. These false and misleading statements are listed in paragraphs 174(a)–(i). Defendants intended to falsely imply that treatment using SDC's platform is "do it yourself" dentistry, and knew that their statements and omissions would create that false impression.

483. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner "Some SmileDirectClub customers report painful problems." (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title "SmileDirectClub promises easy teeth straightening. Some patients report painful problems." (Ex. 1, NBC Online Report at 1.) The online report is titled "'Things didn't feel right': Some SmileDirectClub customers report problems." (*Id.*)

484. Defendant NBC further disseminated and republished the false and misleading statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false and misleading statements by posting the Reports on social media.

485. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 176–187. The statements are demonstrably false.

486. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

487. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 363–365.

488. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

489. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

490. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT IX

Defamation Against NBC and Nguyen for False and Misleading Statements that SDC-Affiliated Doctors Are Not Involved in Treating Patients

491. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

492. Starting on February 13, 2020, Defendants NBC and Nguyen falsely stated that SDC-affiliated doctors are not involved in treating patients and omitted material facts to falsely imply that SDC-affiliated doctors are not involved in treating patients. These false and misleading statements are listed in paragraphs 188(a)–(h). Defendants intended to falsely imply that SDC-affiliated doctors are not involved in treating patients, and knew that their statements and omissions would create that false impression.

493. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

494. Defendant NBC further disseminated and republished the false and misleading statements by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false and misleading statements by posting the Reports on social media.

495. Defendants' statements are and were factually inaccurate, false, and misleading for the reasons stated in paragraphs 190–201. The statements are demonstrably false.

496. Defendants' statements were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

497. Defendants acted with actual malice. Each Defendant knew that their defamatory statements were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 366–368.

498. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

499. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

500. As a direct result of Defendants' defamatory statements, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT X

Defamation Against NBC and Nguyen for Falsely Implying that Treatment Using SDC's Platform is Not Safe for Patients

501. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

502. Starting on February 13, 2020, Defendants NBC and Nguyen made false and misleading statements to imply that treatment using SDC's platform is not safe for patients. Defendants made this implication with false statements, misleading statements due to material omissions, and misleading juxtaposition of statements. The false statements, misleading statements due to material omissions, and misleading juxtaposition of statements are listed in paragraphs 204–213. Defendants intended for their publications to imply that treatment using SDC's platform is not safe for patients, and they knew that their publications would create that false implication.

503. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

504. Defendant NBC further disseminated and republished this false implication by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false and misleading statements by posting the Reports on social media.

505. Defendants' implication is and was factually inaccurate, false, and misleading for the reasons stated in paragraphs 220–228. The statements are demonstrably false.

506. Defendants' statements and implication were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements and implications caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements and implications affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

507. Defendants acted with actual malice. Each Defendant knew that their defamatory statements and implications were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements and implications. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 299–340 and 369–371.

508. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

509. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements and implications, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

510. As a direct result of Defendants' defamatory statements and implications, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XI

Defamation Against NBC and Nguyen for Falsely Implying that Treatment Using SDC's Platform is "Do It Yourself" Dentistry

511. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

512. Starting on February 13, 2020, Defendants NBC and Nguyen made false and misleading statements to imply that treatment using SDC's platform is "do it yourself" dentistry. Defendants made this implication with false statements, misleading statements due to material omissions, and misleading juxtaposition of statements. The false statements, misleading statements due to material omissions, and misleading juxtaposition of statements are listed in paragraphs 230–237. Defendants intended for their publications to imply that treatment using SDC's platform is "do it yourself" dentistry, and they knew that their publications would create that false implication.

513. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner "Some SmileDirectClub customers report painful problems." (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title "SmileDirectClub promises easy teeth straightening. Some patients report painful problems." (Ex. 1, NBC Online Report at 1.) The online report is titled "'Things didn't feel right': Some SmileDirectClub customers report problems." (*Id.*)

514. Defendant NBC further disseminated and republished this false implication by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false and misleading statements by posting the Reports on social media.

515. Defendants' implication is and was factually inaccurate, false, and misleading for the reasons stated in paragraphs 243–253. The statements are demonstrably false.

516. Defendants' statements and implication were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements and implications caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements and implication affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

517. Defendants acted with actual malice. Each Defendant knew that their defamatory statements and implication were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements and implications. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 290–340 and 372–374.

518. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

519. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements and implications, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

520. As a direct result of Defendants' defamatory statements and implications, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XII

Defamation Against NBC and Nguyen for Falsely Implying that Treatment Using SDC's Platform Is Not Effective for Patients

521. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

522. Starting on February 13, 2020, Defendants NBC and Nguyen made false and misleading statements to imply that treatment using SDC's platform is not effective for patients. Defendants made this implication with false statements, misleading statements due to material omissions, and misleading juxtaposition of statements. The false statements, misleading statements due to material omissions, and misleading juxtaposition of statements are listed in paragraphs 255–264. Defendants intended for their publications to imply that treatment using SDC's platform is not effective, and they knew that their publications would create that false implication.

523. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

524. Defendant NBC further disseminated and republished this false implication by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false and misleading statements by posting the Reports on social media.

525. Defendants' implication is and was factually inaccurate, false, and misleading for the reasons stated in paragraphs 271–278. The statements are demonstrably false.

526. Defendants' statements and implication were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements and implications caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements and implication affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

527. Defendants acted with actual malice. Each Defendant knew that their defamatory statements and implication were factually inaccurate and false when they published the statements. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements and implications. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 290–340 and 375–377.

528. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

529. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements and implications, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

530. As a direct result of Defendants' defamatory statements and implications, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XIII

Defamation Against NBC and Nguyen for Falsely Implying that SDC is a Dishonest Company

531. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

532. Starting on February 13, 2020, Defendants NBC and Nguyen made false and misleading statements to imply that SDC is a dishonest company. Defendants made this implication with false statements, misleading statements due to material omissions, and misleading juxtaposition of statements. The false statements, misleading statements due to material omissions, and misleading juxtaposition of statements are listed in paragraphs 280–285. Defendants intended for their publications to imply that SDC is a dishonest company, and they knew that their publications would create that false implication.

533. Defendants NBC and Nguyen published and republished these false and misleading statements during a televised broadcast and online report. The broadcasted report carried the banner “Some SmileDirectClub customers report painful problems.” (Ex. 4, NBC Broadcast Video.) The online version of the broadcasted report carries the title “SmileDirectClub promises easy teeth straightening. Some patients report painful problems.” (Ex. 1, NBC Online Report at 1.) The online report is titled “‘Things didn’t feel right’: Some SmileDirectClub customers report problems.” (*Id.*)

534. Defendant NBC further disseminated and republished this false implication by having the televised broadcast repeated by its local affiliates and encouraging other news organizations to republish the Reports. Defendants NBC and Nguyen also further disseminated and republished the false and misleading statements by posting the Reports on social media.

535. Defendants' implication is and was factually inaccurate, false, and misleading for the reasons stated in paragraphs 292–296. The statements are demonstrably false.

536. Defendants' statements and implications were unprivileged and defamatory because they exposed SDC to impairment of reputation and standing in the community. The statements and implications caused SDC, its platform, and its clear aligners to be shunned or avoided by industry participants and members of the public. The statements and implications affected the marketability of SDC's platform and clear aligners, and injured SDC's business.

537. Defendants acted with actual malice. Each Defendant knew that their defamatory statements and implications were factually inaccurate and false when they published them. Alternatively, each Defendant acted with reckless disregard for the truth when publishing the statements and implications. The allegations related to each Defendant's actual malice include, but are not limited to, those pled in paragraphs 290–340 and 378–380.

538. Defendant NBC also failed to exercise due care to prevent the publication or utterance of these defamatory statements during its broadcast and publication.

539. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract these defamatory statements and implications, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

540. As a direct result of Defendants' defamatory statements and implications, SDC has suffered actual and consequential damages in an amount that will be proven at trial.

COUNT XIV

Violation of Tennessee's Consumer Protection Act Against NBC and Nguyen

541. SDC realleges and incorporates by reference the allegations in paragraphs 1 to 410 as if stated herein.

542. SDC, on its own behalf and on behalf of SDC-affiliated doctors, advertises and sells goods and/or services in trade or commerce as defined in the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-103(8 & 20) (2018).

543. Defendants made false and/or misleading statements that caused confusion and/or misunderstanding as to the source, sponsorship, approval, or certification of SDC's goods and/or services, in violation of Section 104(b) of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(b)(2) (2018).

544. Defendants made false and/or misleading statements in which they represented that SDC's goods and/or services are of a particular standard, quality, or grade, when they were of another, in violation of Section 104(b) of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(b)(7) (2018).

545. Defendants made false and/or misleading statements of fact that disparaged the goods, services, and/or business of SDC in violation of Section 104(b) of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(b)(8) (2018).

546. Defendants made false and/or misleading statements of fact concerning the reasons for the price of SDC's clear aligners and services relative to the costs of traditional braces, in violation of Section 104(b) of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(b)(11) (2018).

547. Defendants willfully and knowingly made the false and/or misleading statements of fact about SDC's goods and/or services in violation of the Tennessee Consumer Protection Act,

thereby entitling SDC to treble damages, pursuant to Section 109(a)(3) of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-109(a)(3) (2018).

548. On February 14, 2020, and April 3, 2020, SDC provided notice to and demanded that Defendants retract their defamatory statements and implications, publish a prominent correction during NBC's evening news program and online, and cease the further dissemination of the false statements and implications and related stories. (Ex. 55, Ex. 56.) Defendants failed to do so.

549. Defendants' unfair and/or deceptive acts and/or practices caused SDC to suffer actual and consequential damages in an amount to be proven at trial.

PRAYER FOR RELIEF

550. For the foregoing reasons, SDC prays for judgment against Defendant NBC and Ms. Nguyen for each of the counts raised herein.

551. SDC requests a judgment against both Defendants for:

- a. Actual and consequential damages;
- b. Statutory damages, including treble damages pursuant to Tennessee's Consumer Protection Act;
- c. Punitive damages;
- d. Reasonable and necessary attorneys' fees;
- e. Reasonable and necessary costs of the suit;
- f. Prejudgment and post-judgment interest at the highest lawful rates;
- g. Declarative and injunctive relief; and,
- h. Other and further relief this Court deems appropriate.

JURY DEMAND

SDC requests a trial by jury on all matters raised herein.

Dated: May 18, 2020

Respectfully submitted,

s/J. Erik Connolly

J. Erik Connolly (pro hac vice motion pending)
Nicole E. Wrigley (pro hac vice motion pending)
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