EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RACHEL WITLIEB BERNSTEIN, ANDREA MACKRIS, and REBECCA GOMEZ DIAMOND, Plaintiffs, v. BILL O'REILLY and FOX NEWS NETWORK LLC, TWENTY-FIRST CENTURY FOX, INC., Defendants.	Civil Action No. 1:17-cv-9483 (DAB) [corrected, proposed] **SECOND AMENDED COMPLAINT**

Plaintiffs, **RACHEL WITLIEB BERNSTEIN, ANDREA MACKRIS and REBECCA GOMEZ DIAMOND**, through their attorneys, Smith Mullin, P.C., allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action by the plaintiffs, Rachel Witlieb Bernstein, Andrea Mackris and Rebecca Gomez Diamond ("Plaintiffs" or "Ms. Bernstein," "Ms. Mackris," or "Ms. Diamond"), against defendants Bill O'Reilly ("Defendant" or "O'Reilly") and Fox News Network LLC ("Defendant" or "Fox News") and Twenty-First Century Fox, Inc. ("Defendant" or "21st Century Fox"). All plaintiffs sue for defamation. Plaintiff Bernstein has additional claims for breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference.

THE PARTIES

2. Plaintiff, Rachel Witlieb Bernstein, is a resident and citizen of California.

3. Plaintiff, Andrea Mackris, is a resident and citizen of Missouri.

4. Plaintiff, Rebecca Gomez Diamond, is a resident and citizen of New Jersey.

5. Defendant Bill O'Reilly is a citizen of New York State residing in Long Island.

6. Defendant Fox News is a cable television news and entertainment company that operates, among other things, the Fox News Network, Fox Business News, Foxnews.com and, until recently, Fox News Latino.

7. Defendant Fox News is a wholly owned subsidiary of its parent company, Defendant 21st Century Fox, and maintains its principal place of business in New York, New York, where the acts complained of occurred. Rupert Murdoch was, and is, the Chairman of Fox News and acting CEO, as well as the co-Executive Chairman of 21st Century Fox.

8. Defendant 21st Century Fox is a corporation incorporated in the State of Delaware with its principal place of business in New York, New York.

9. Defendant 21st Century Fox completely controls and dominates its subsidiary, Fox News, with respect to all of the events set forth herein.

10. Because of the serious public relations and litigation matters, including the drop in shares price and revenue caused by Defendants' own actions in fostering and covering up years sexual harassment, discrimination and retaliation at Fox News, Defendant 21st Century Fox has, at all times relevant hereto, taken over and directed all public relations and litigation matters relating to its subsidiary, Fox News, concerning the numerous sexual harassment, discrimination and retaliation claims that have plagued Defendants. In fact, after the former CEO Roger Ailes of Fox News was forced out on or about July 21, 2016

because of numerous sexual harassment and complaints made against him, Mr. Murdoch took over Fox News as the acting CEO and has remained in that position at Fox News to this day.

11. In addition, Defendant 21st Century Fox, has indicated in its 2017 Annual Report to its shareholders that it – the Company – has taken over control of these matters when it wrote:

> *Fox News Channel*
>
> The Company and certain of its current and former employees have been subject to allegations of sexual harassment and discrimination and racial discrimination relating to alleged misconduct at the Company's Fox News Channel business. The Company has settled some of these claims and is contesting other claims in litigation. To date, none of the amounts paid in settlements or reserved for pending or future claims, is individually or in the aggregate, material to the Company. The Company has also received regulatory and investigative inquiries relating to these and stockholder demands to inspect the books and records of the Company which could lead to future litigation....

12. At all times pertinent hereto, Defendant O'Reilly was, and remains, an agent, representative and employee of Defendants Fox News and 21st Century Fox.

13. Even after O'Reilly was taken off the air at Fox News as a host of his own cable program on April 19, 2017, O'Reilly remained and remains contractually bound to them under his employment contract with Defendants as that contract has yet to expire.

14. Defendants Fox News and 21st Century Fox continued to promote and maintain the profile of defendant O'Reilly by having him on the air and allowing its on-air hosts to provide a platform for O'Reilly, including for the defamation described herein.

JURISDICTION

15. This Court has diversity jurisdiction over this action pursuant to 28 *U.S.C.* § 1332 in that the plaintiffs' citizenship is completely diverse from that of the defendants and the matter in controversy exceeds the sum of $75,000.00 exclusive of interest and costs.

VENUE

16. Venue is proper in this District under 28 *U.S.C.* § 1391(b)(2) because defendants Fox News and 21st Century Fox are based in New York City, defendant Bill O'Reilly lives in Long Island, New York, and the actions complained about herewith were authorized by Fox News Network in New York. Additionally, with regard to plaintiff Rachel Witlieb Bernstein, the contract at issue was entered in New York City, the contract provides that New York law applies, and the conduct at issue took place in New York City.

COUNT ONE

(RELEVANT FACTS AS TO ALL PLAINTIFFS AND BREACH OF OF CONTRACT AS TO PLAINTIFF RACHEL WITLIEB BERNSTEIN)

A. Rachel Witlieb Bernstein

17. In July of 2002, plaintiff Rachel Witlieb Bernstein entered into a Settlement Agreement and Release releasing Fox News and Bill O'Reilly of all claims, including claims of discrimination. The Agreement provides as follows:

> 5(f) Non-Disparagement: Witlieb and Fox each agree not to disparage, trade libel, or otherwise defame each other, and in the case of Fox, Witlieb agrees not to disparage, trade libel, or otherwise defame its officers or employees, including without limitation, Bill O'Reilly. In the case of Witlieb, for purposes of this Paragraph 5(e), the term "Fox" shall mean the released parties referenced in Paragraph 4(a) above, including Bill

> O'Reilly, and said released parties agree not to disparage, trade libel, or otherwise defame Witlieb.

18. The Agreement further provides:

> Confidentiality: Wittlieb (sic) and Fox, and their respective legal counsel, and any other person acting on Wittlieb (sic) or Fox's behalf, or through either of them, shall not disclose to any person the contents of this Agreement or the facts or allegations that gave rise to this Agreement. If asked, each of Wittlieb (sic) and Fox and their respective legal counsel may say only 'The matter has been resolved (or settled)', without elaboration. Notwithstanding the foregoing, however, Wittlieb (sic) and Fox, and their respective counsel, shall not be prohibited from making such disclosures of these matters to any person who has a legal necessity to know (as, for example, in the case of a valid subpoena) and to their respective accountants, and in Wittlieb's (sic) case, to her immediate family, but in each such instance Fox and Wittlieb (sic) shall specifically make best efforts to prevent those persons from repeating those disclosures to any other person. Either Wittlieb (sic) or Fox's breach of this provision shall constitute a material breach of this Agreement.

19. Plaintiff Bernstein has in no way violated any of the provisions of the respective Settlement Agreement.

20. On April 1, 2017, The New York Times reported that "Bill O'Reilly Thrives at Fox News, Even as Harassment Settlements Add Up." The article by Emily Steel and Michael S. Schmidt revealed that defendant O'Reilly and/or defendant Fox News had paid five women about $13 million to forego litigation and never speak about what O'Reilly did to them. The article specifically mentioned plaintiff Bernstein by name:

> Fox News has been aware of complaints about inappropriate behavior by Mr. O'Reilly since at least 2002, when Mr. O'Reilly stormed into the news room and screamed at a young

> producer, according to current and former employees, some of whom witnessed the incident.
>
> Shortly thereafter, the woman, Rachel Witlieb Bernstein, left the network with a payout and bound by a confidentiality agreement, people familiar with the deal said. The exact amount she was paid is not known, but it was far less than the other settlements. The case did not involve sexual harassment.

21. Ms. Bernstein was not the source of the information printed in The New York Times.

B. Andrea Mackris

22. Plaintiff Andrea Mackris was also specifically named as a Fox News employee who had made claims of sexual harassment against Bill O'Reilly and settled those claims.

Regarding plaintiff Mackris The New York Times reported:

> Two years later, allegations about Mr. O'Reilly entered the public arena in lurid fashion when a producer on his show, Andrea Mackris, then 33, filed a sexual harassment lawsuit against him. In the suit, she said he had told her to buy a vibrator, called her at times when it sounded as if he was masturbating and described sexual fantasies involving her. Ms. Mackris had recorded some of the conversations, people familiar with the case said.
>
> Ms. Mackris also said in the suit that Mr. O'Reilly, who was married at the time (he and his wife divorced in 2011), threatened her, saying he would make any woman who complained about this behavior "pay so dearly that she'll wish she'd never been born."
>
> Fox News and Mr. O'Reilly adopted an aggressive strategy that served as a stark warning of what could happen to women if they came forward with complaints, current and former employees told The Times.
>
> Before Ms. Mackris even filed suit, Fox News and Mr. O'Reilly surprised her with a pre-emptive suit of their own,

> asserting she was seeking to extort $60 million in return for not going public with "scandalous and scurrilous" claims about him.
>
> "This is the single most evil thing I have ever experienced, and I have seen a lot," he said on his show the day both suits were filed. "But these people picked the wrong guy."
>
> A public relations firm was hired to help shape the narrative in Mr. O'Reilly's favor, and the private investigator Bo Dietl was retained to dig up information on Ms. Mackris. The goal was to depict her as a promiscuous woman, deeply in debt, who was trying to shake down Mr. O'Reilly, according to people briefed on the strategy. Several unflattering stories about her appeared in the tabloids.
>
> After two weeks of sensational headlines, the two sides settled, and Mr. O'Reilly agreed to pay Ms. Mackris about $9 million, according to people briefed on the agreement.

23. Ms. Mackris was not the source of the information about her claims against O'Reilly or the settlement of those claims as reported in The New York Times.

C. **Rebecca Gomez Diamond**

24. Plaintiff Rebecca Gomez Diamond was also specifically named in the April 1, 2017 New York Times story which stated:

> In 2011, Rebecca Gomez Diamond, who had hosted a show on the Fox Business Network - also supervised by Mr. Ailes - was told the network was not renewing her contract. Similar to Ms. Mackris, she had recorded conversations with Mr. O'Reilly, according to people familiar with the case. Armed with the recordings, her lawyers went to the company and outlined her complaints against him.
>
> Ms. Diamond left the network, bound by a confidentiality agreement, and Mr. O'Reilly paid the settlement, two of the people said. The exact amount of the payout is not known.

25. Plaintiff Diamond was not the source of the information printed in The New York Times.

D. Defendants' Disparaging and Defamatory Statements

26. In the April 1, 2017 New York Times article, Mr. O'Reilly violated the non-disparagement clause in Ms. Bernstein's settlement agreement and defamed all three plaintiffs (members of a small identifiable group), by stating:

> Just like other prominent and controversial people, I'm vulnerable to lawsuits from individuals who want me to pay them to avoid negative publicity. In my more than 20 years at Fox News Channel, no one has ever filed a complaint about me with the Human Resources Department, even on the anonymous hotline.
>
> * * *
>
> The worst part of my job is being a target for those who would harm me and my employer, the Fox News Channel. Those of us in the area are constantly at risk, as are our families and children. My primary efforts will continue to be to put forth an honest TV Program and to protect those close to me.

27. Defendants continued their defamation of the three plaintiffs (members of a small identifiable group), including:

(a). On April 19, 2017, defendant Fox News defamed the plaintiffs in an article on Fox letterhead written by full-time Fox analyst, Howard Kurtz, and published on Fox News.com, and republished throughout the world. The publication noted that O'Reilly was meeting with the Pope as part of a VIP tour of the Vatican and sympathetically portrayed and quoted Defendant O'Reilly as "disheartened" that he was "parting ways with Fox News" due to "completely unfounded claims" which are part of a "liberal smear campaign" and a "brutal

campaign of character assassination that is unprecedented in post-McCarthyist America."

This article is still available on line http://ww.foxnews.com/entertainment

/2017/04/19/fox-news-drops-bill-oreilly-in-wake-harassment-allegations.html.

(b). That same publication on Fox.News contains a video link to a statement read by an anchor on the cable TV program, The Factor at Fox News, in which she said:

> Finally tonight, it is the end of an era here at the Fox News Channel. As we mentioned earlier, Bill O'Reilly is leaving this chair and this network after more than 20 years. Bill has been the undisputed king of cable news and for good reason. He is an incredibly talented broadcaster who raised the bar for interviewers everywhere. He has also held his stature, exacting standards in his quest to put the best possible program on the air and they are great. And you his audience responded in record numbers making The Factor the number one cable news show for more than 16 years. He has also been loyal and we can't tell you how much that means to everyone on The Factor. In a memo to the staff today, Rupert James and Lachlan Murdoch who run Fox News, described Bill this way: "By rating standards, Bill O'Reilly is one of the most accomplished TV personalities in the history of cable news. In fact, his success by any measure is undisputable. We wish him the very best."

Defendant O'Reilly continued his disparagement of Ms. Bernstein and his defamation of the three plaintiffs (members of a small identifiable group) [deleted text now included above] on O'Reilly's website and in comments published by The Hollywood Reporter on April 21, 2017. Defendant O'Reilly stated:

> But most importantly, I'm a father who cares deeply for my children and who would do anything to avoid hurting them in any way. And so I have put to rest any controversies to spare my children.
>
> The worst part of my job is being a target for those who would harm me and my employer, the Fox News Channel. Those of us in the arena are constantly at risk, as are our families and

> children. My primary efforts will continue to be to put forth an honest TV program and to protect those close to me.

28. These statements also were published in whole or in part by numerous media outlets including, but not limited to, Newsweek, the Washington Post, NBCnews.com, New York Magazine, Money Magazine, CNN.com, CNBC.com, Vanity Fair, the LA Times, the Washington Examiner, Huffington Post, and the Chicago Tribune. These statements were published to millions of people.

29. Defendant Fox News published a statement through its parent company, Defendant 21st Century Fox, defending defendants O'Reilly and Fox as well as 21st Century Fox on April 1, 2017, the same date The New York Times story exposing O'Reilly's years of abuse of women was published:

> Notwithstanding the fact that no current or former Fox News employee ever took advantage of the 21st Century Fox hotline to raise a concern about Bill O'Reilly, even anonymously, we have looked into these matters over the last few months and discussed them with Mr. O'Reilly. While he denies the merits of these claims, Mr. O'Reilly has resolved those he regarded as his personal responsibility. Mr. O'Reilly is fully committed to supporting our efforts to improve the environment for all our employees at Fox News.

30. In repeating that defendant O'Reilly denied the merits of the claims of those named in the article in the The New York Times, defendants Fox News and 21st Century Fox defamed plaintiffs. In fact, plaintiffs Mackris and Diamond had irrefutable proof showing that O'Reilly sexually harassed them - evidence of which Fox News was well aware when making the statement in Paragraph 22. Defendants Fox News and 21st Century Fox also knew that numerous witnesses saw O'Reilly abuse and mistreat Ms. Bernstein.

31. Defendants Fox News, 21st Century Fox and O'Reilly disparaged and defamed the plaintiffs by falsely claiming that they did not complain to the company about O'Reilly's illegal actions. Of course they complained. Plaintiffs did complain internally to Fox News in a timely manner. They all settled their complaints. In the Settlement Agreements, Fox and O'Reilly demanded plaintiffs' silence about O'Reilly's harassment and mistreatment.

32. Contrary to defendants' false statements, Ms. Bernstein repeatedly complained to Fox Human Resources, Bill Shine, and other Fox executives about O'Reilly's mistreatment. As defendants know, there was no "hotline" when plaintiff Bernstein was employed. 21st Century Fox was not the parent company of Fox News until 2013.

33. Defendant Fox News did not have clear mechanisms to report sexual harassment and many employees, including Suzanne Scott, President of Programming, were not aware of any hotline until recent years, and certainly not a 21st Century Fox hotline prior to 2013, if then.

34. Contrary to defendants' false statements, plaintiff Mackris complained through her lawyer to Fox News VP of Legal Dianne Brandi about O'Reilly's harassment. No investigation was conducted. Instead, after smearing Ms. Mackris in the press and frightening her with surveillance and bullying, defendant Fox News settled Ms. Mackris's legal claims with the stipulation that she remain silent about O'Reilly's harassment and leave Fox News. Defendants Fox News and 21st Century Fox continued to employ O'Reilly knowing that he harassed and abused women.

35. Plaintiff Diamond complained through her lawyer to Fox News VP of Legal Dianne Brandi about O'Reilly's harassment. No investigation was conducted. Instead, Fox

News settled Ms. Diamond's legal claims with the stipulation that she remain silent about O'Reilly's harassment and leave Fox News. Defendants Fox News and 21st Century Fox continued to employ O'Reilly knowing that he harassed and abused women.

36. The policy manual at Fox News provides that complaints can be brought to the legal department (Dianne Brandi during all relevant times).

37. By making the repeated false statements that none of the plaintiffs (members of a small identifiable group) complained, defendants O'Reilly, Fox News and 21st Century Fox disparaged and defamed them, portraying them as liars and extortionists who have concocted complaints and never gave the company the opportunity to investigate them in a timely way. In fact, defendants Fox News and 21st Century Fox chose to get rid of women who complained about sexual harassment and insist on their silence while continuing to employ defendant O'Reilly, allowing him to continue his harassment and abuse of female Fox employees.

38. Defendants' false statements that none of the plaintiffs complained was published by numerous news outlets throughout the country making it available to millions of people.

39. In the statements above, defendant O'Reilly portrayed himself as a "target" and claimed that complaints against him are extortionate. This is false. In fact, he is a serial abuser and plaintiffs' complaints about him were far from extortionate.

40. Defendant O'Reilly was employed by Fox News and was an agent and representative of defendant 21st Century Fox when he breached the non-disparagement and confidentiality clauses of Ms. Bernstein's Settlement Agreement.

41. Defendants Fox, 21st Century Fox and O'Reilly materially breached the Agreement by making statements other than the agreed-upon statement and by issuing false, disparaging and defamatory statements.

42. Defendants knew that plaintiff Bernstein was forced by defendants to sign the non-disparagement and confidentiality clauses and would be afraid to answer defendants' false, disparaging and defamatory statements.

43. Defendant Fox News participated in and authorized its employee Bill O'Reilly to breach the contract by disparaging Ms. Bernstein.

44. Defendants Fox News and 21st Century Fox participated in and authorized its employee and agent Bill O'Reilly to defame plaintiffs Ms. Bernstein, Ms. Mackris and Ms. Diamond.

45. Defendant Fox News breached it agreement with plaintiff Bernstein in making a statement other than the statement specifically stipulated in her settlement agreement.

46. Defendants Fox News breached its contract with plaintiff Bernstein by allowing and authorizing its employee Bill O'Reilly to disparage and defame Ms. Bernstein and to make statements other than those to which the parties agreed.

47. On September 13, 2017, defendant Bill O'Reilly again falsely stated to The Hollywood Reporter that "no one was mistreated on my watch." This statement falsely portrayed the three named plaintiffs (the small group identified in the April 1, 2017 New York Times article) as liars.

48. Also on September 13, 2017, defendant O'Reilly stated to The Hollywood Reporter that "once you get a famous name, and once you're in the political arena, the combination is devastating. If they can get you, they're going to get you." O'Reilly presented himself as a victim of a vast conspiracy and not a serial abuser and coward hiding behind the non-disclosure agreements he forced his victims to sign.

49. O'Reilly portrayed the small group of abused women identified in the April 1, 2017 New York Times article, including the three plaintiffs, in a false light, defamed and disparaged their character, calling into question their motives for objecting to O'Reilly's abuse and ultimately being forced out at Fox News with a Settlement Agreement.

50. On September 18, 2017, defendant O'Reilly was a guest of Fox Anchor Sean Hannity on Hannity's radio show, "The Sean Hannity Show." On that September 18, 2017 radio show, O'Reilly defamed Plaintiffs by portraying himself as a "victim" of women who falsely accused him of sexual harassment and made claims against him, that he had conducted an investigation into many of the women who had reported him and it produced "shocking results" and that he was "the latest victim" of a progressive campaign aimed at getting him off the air. O'Reilly continued to claim:

- that after his "investigation" he would give the public "facts," "no he said she said. Facts. Cold stone facts. Shocking the defamation that can occur."
- Clearly referring to the sexual harassment claims made against him in The New York Times article, O'Reilly said, "They don't care if it's true or not. Allegations become facts."
- By making such false statements, O'Reilly was referring to Plaintiffs, the small group of women who were previously identified in the said New York Times articles, in yet another attempt to portray Plaintiffs'

as liars, who could not be believed, who along with other women, made false claims against him.

51. Fox News' website promotes its employee' Sean Hannity's podcasts, radio show and his website. Specifically, by clicking on the link, "You want more of Hannity?" on Fox's website, it provides a direct link to the website, "Sean.Hannity.com" which broadcasts' Sean Hannity's radio show including the one from September 18, 2017. Defendant Fox News by providing a link to the Sean Hannity website which includes his radio show, is a "publisher" of the September 18, 2017 defamatory statements made by O'Reilly.

52. Defendant O'Reilly's defamatory campaign against Plaintiffs continued on September 19, 2017 when he appeared on the Today show, a daytime TV show, and was interviewed by Matt Later. During that interview, in which he was asked about The New York Times article and the women who had made complaints of sexual harassment and misconduct against him, O'Reilly defamed Plaintiffs repeatedly, including when he said:

> MR. O'REILLY: I've been in this business, I've worked for 12 companies; not one time did I have any interaction with HR or any complaints filed against me.
>
> * * *
>
> MR. O'REILLY: ...every allegations is conviction...Every allegations in this area is a conviction. They don't look for the truth.
>
> * * *
>
> MR. LAUER: But you were also named. [in the women's lawsuits].
>
> MR. O'REILLY: I was named in a few of them. A few of them.
>
> MR. LAUER: * * * - have you done some self-reflection and have you looked at the way you treated women that you think now or think about differently now than you did at the time?
>
> MR. O'REILLY: My conscience is clear. What I have done is organized a legal team to get the truth to the American people, so if you to, um, newsmax.com or billoreilly.com, ***
>
> * * *

MR. O'REILLY: You know, nobody's a perfect person, but I can go to sleep at night very well knowing that I never mistreated anyone on my watch in 42 years.

53. The above-referenced statements made by O'Reilly made on The Today Show were false.

54. By repeating that he did not have "any complaints filed against me" and that "he never mistreated anyone on my watch in 42 years" and that "his legal team [would] get the truth to the American people" O'Reilly's statements portrayed plaintiff's as liars who had brought unfounded complaints of harassment against him.

55. On October 21, 2017, Emily Steel and Michael Schmidt revealed in another New York Times article that in January 2017, defendant O'Reilly paid Fox News analyst Lis Wiehl $32 million in exchange for a release of claims of repeated harassment, a non-consensual sexual relationship, and receiving unwanted pornographic e-mails or texts. The article stated that the settlement required Ms. Wiehl to sign a non-disclosure agreement and to destroy communications between O'Reilly and Wiehl.

56. The New York Times also reported that in February 2017, one month after O'Reilly agreed to pay Ms. Wiehl $32 million in exchange for a Release of claims against him and the company, Fox News, aware of the settlement, signed a four year contract with O'Reilly paying him $25 million a year.

57. In response to the new reporting, Mr. O'Reilly made more false and defamatory statements when questioned about the numerous settlements he and Fox had entered into with women, by again stating "I never mistreated anyone." In fact, he mistreated Ms. Bernstein

frequently and in front of numerous witnesses. Defendant's false statement disparaged and defamed Ms. Bernstein by portraying her as a liar.

58. In making the statement "I never mistreated anyone," defendant O'Reilly defamed plaintiffs Bernstein, Mackris and Diamond, members of the small group about which O'Reilly was clearly speaking. In fact, he mistreated both Ms. Mackris and Ms. Diamond and he is well aware of the irrefutable evidence of his harassment, abuse and mistreatment which caused him to settle their legal claims. Defendant's false statement defamed plaintiffs Mackris and Diamond by portraying them as liars, political operatives, and extortionists.

59. In October of 2017, O'Reilly added that the claims against him were "politically and financially motivated." He also stated that he had "resolved matters privately because he wanted to protect his children from the publicity." These false statements portrayed plaintiffs in a false light and disparaged their character, in fact calling them liars, political operatives and extortionists.

60. In fact, Mr. O'Reilly is lying and covering up the truth. He mistreated Ms. Bernstein. She was forced out of her job at Fox News and paid a settlement because of his mistreatment. She did go to HR and other company executives to complain about him several times. Fox News took no action to protect plaintiff from O'Reilly. There were many witnesses to her mistreatment. She was not politically or financially motivated to seek legal redress for O'Reilly's abuse.

61. In fact, Mr. O'Reilly is lying and covering up the truth. There is clear and objective evidence that he mistreated and harassed Andrea Mackris. Ms. Mackris was not politically or financially motivated to seek legal redress for O'Reilly's abuse and harassment.

62. In fact, Mr. O'Reilly is lying and covering up the truth. There is clear and objective evidence that he mistreated and harassed Rebecca Gomez Diamond. Ms. Diamond was not politically or financially motivated to seek legal redress for O'Reilly's abuse and harassment.

63. In October 2017, Mr. O'Reilly made several public appearances to promote a new book. During those public appearances, he stated that the complaints made against him at Fox News by women who received settlements (an obvious reference to the small group identified in the April 1, 2017 New York Times article) were "a political and financial hit job." This defamatory and disparaging statement is false. Plaintiffs settled their claims and left Fox News because of severe mistreatment, harassment and abuse by Mr. O'Reilly, as he knows.

64. Defendants Fox News and O'Reilly knew plaintiffs' settlements were among numerous examples of settlements entered in order to keep quiet O'Reilly's abuse of women and the atmosphere at Fox which enabled such abuse. Despite this knowledge, defendant Fox News issued a statement designed to disparage and defame plaintiffs by falsely claiming that they never complained about O'Reilly's abuse.

65. On or about October 18, 2017, defendant O'Reilly held a press conference at the office of his lawyers with two lawyers in attendance. The press conference was attended

by Emily Steel and Michael Schmidt of The New York Times, which in print and online reaches millions of readers around the world.

66. On October 21, 2017, The New York Times reported that defendant O'Reilly was recorded on October 18, 2017 making the following false, disparaging and defamatory statement in a taped on-the-record interview with the New York Times: "I've been in the business for 43 years and I've never had a complaint filed by anyone at 12 different companies."

67. On October 23, 2017, The New York Times posted a podcast including an audio recording of defendant O'Reilly's on-the-record statements at that press conference he called at his lawyer's office on October 18, 2017. In that press conference, New York Times reporter Michael Schmidt asked if O'Reilly wanted to address anything in the 2017 article. O'Reilly claimed that the settlement figures were wrong, and falsely saying:

> Well, it's been a horrendous experience. I've been in the broadcast business, journalism business 43 years. I've never had one complaint filed against me by a coworker, in any human resources department in 43 years. And that encompasses 12 different companies.
>
> So, all of a sudden, all this stuff happens, and the pain it brings to my children is indescribable. Indescribable. And I would give up my life to protect my children, but I find myself not able to protect them because of things that are being said about me, their father.
>
> * * *
>
> ...Eric Bolling's son is dead. He's dead. Because of allegations made, in my opinion, and I know this to be true, against Mr. Bolling. No game.

68. Defendant O'Reilly's above-comments were false, defamatory and meant to portray himself as a victim. New York Times reporter Emily Steel noted that during the interview defendant O'Reilly claimed there was a "left wing conspiracy that was behind his

ouster and that he had been organizing a legal team to get the truth out to the American people." Defendant O'Reilly then stated:

> ... we have physical proof that this is bullshit. Bullshit. Okay? So, it's on you, if you want to destroy my children further. All right? Because it's all crap.
>
> * * *
>
> So why don't you be human beings for once. This is horrible. It's horrible what I went through, horrible what my family went through. This is crap, and you know it. It's politically and financially motivated, and we can prove it, with shocking information.

69. On October 23, 2017, Defendant O'Reilly appeared on Glenn Beck's radio program, full audio recording available at, https://soundcloud.com/glennbeck/10-23-17-bill-oreilly-bonus, and O'Reilly again defamed plaintiffs with the following false comments:

> Yeah, well, I was in the, uh, I have been in the broadcast business for 43 years, 12 different companies. Never one time was there any complaint filed against me with Human Resources or anybody's legal team, nothing zero.
>
> 20 years and six months. All right, 20 years and six months. [at Fox] I resolved three things. That's all I resolved in 20 years and 6 months, I resolved three things [presumably the plaintiffs' complaints] and the only reason I did resolve them was to keep my children safe.
>
> ***
>
> My biggest mistake was settling. You gotta understand how much pain this has caused me and my children. I would do anything for my children. That's why I did it.

O'Reilly then falsely claims that plaintiffs' violated the confidentiality provisions of the settlement agreements, by stating, "in my case, all the confidentially stuff was – violated – every bit of it."

70. Defendant O'Reilly again defamed plaintiffs and falsely accused them of breaching their agreements when he said: "We thought people would uphold their oath and what they agreed to do. They haven't."

71. On October 23, 2017, defendant O'Reilly stated on his podcast (hypocritically called "No Spin News") and/or posted on his website the following false, disparaging and defamatory statements referring specifically to the settlements reached at Fox: "Smears in this country now . . . allegations are facts. No doubt about that. Papers don't check anything out, they just print whatever allegations they want to print. And it's devastating, and that brings me to the main point of this story. The New York Times knows that I cannot specifically refute anything. In 20 years, 6 months at the Fox News Channel, I resolved three situations. Three I resolved. And I did that to protect my children from harm. And I would do anything, anything to protect my children from harm. So it was three in 20 years and 6 months that I resolved. Part of the resolution is nobody talks about it. Now, obviously that's been broken on the other side. But I can't break it. Because if I do, that opens everything all up again and it's insane."

72. He also said on that podcast that The New York Times "came back with a bunch of garbage" after having "attacked" him "in a very distorted way for these harassment deals" in April.

73. In another audio interview between Defendant O'Reilly and Glenn Beck (on Glenn Beck's radio show, The Blaze: "Bill O'Reilly & Glenn Beck on the Opioid Crisis, Uranium One, and More News from the Week"), which was posted on October 27, 2017 on

Defendant O'Reilly's website, billoreilly.com, with the audio available at, https://www.billoreilly.com/f/Audio-Center#play. Defendant O'Reilly again states:

> O'Reilly: There are two things here. When it comes to women being, um. mistreated, that's the best word. Every American should want one thing - justice. Would you agree with that?
>
> Beck: Yes.
>
> O'Reilly: The other thing is verifiable is I've been in the business 43 years. Never once was there a complaint filed against me with any HR in 12 different companies. Verifiable.

74. On October 23, 2017, defendant O'Reilly stated on his podcast and/or posted on his website the following false, disparaging and defamatory statement: "The bottom line is that my enemies who want to silence me have made my life extremely difficult and have hurt me in the marketplace. Anybody who doesn't like me will believe all the stuff the smear merchants put out, but I'm interested in you, I'm interested in people who are fair-minded."

75. In the statements set forth above in Paragraphs 43 through 74, defendant O'Reilly was specifically referring to the plaintiffs (the small group identified in the April 1, 2017 New York Times article) in making these false and disparaging statements - they are the "situations" O'Reilly resolved in order to avoid a public trial where witnesses under oath would testify and evidence would be revealed about his abusive behavior. Plaintiffs' claims are falsely portrayed by defendant O'Reilly as based on lies which are part of a conspiracy designed to "smear" him and "hurt him in the marketplace."

76. These statements were designed to disparage plaintiffs by falsely stating that plaintiffs never complained about O'Reilly's abuse, by claiming that O'Reilly did nothing

wrong, by claiming that plaintiffs are "smearing" him in order "to silence" him, and by claiming that plaintiffs violated their Settlement Agreements.

77. On October 23, 2017 defendant O'Reilly continued to spin false stories on his podcast and/or his website, falsely portraying himself as a victim, a truth teller, and an heroic father (while he is none of those things), by stating: "You know, am I mad at God? Yeah, I'm mad at him. I wish I had more protection." He went on to give advice which he has obviously and repeatedly ignored: "Never give up telling the truth. Never give up protecting your family..... I'm going to go down fighting and I'm going to go down telling the truth."

78. On November 29, 2017, Defendants' defamation campaign against plaintiffs continued, on O'Reilly's "No Spin News," available on BillOReilly.com, O'Reilly compared his own situation and those of other well-known male broadcasters who were taken off the air for sexual harassment complaints to being victims of "false accusations" akin to the Salem Witch trials and indicating that he intended to sue his accusers (which of course include plaintiffs) in court:

> All right, so there's a lot of talk about here in America and I'm going to be very precise in my analysis tonight because it's a fact that we have now entered a very dangerous period in our republic. Today, Matt Lauer left NBC News because he was accused of something. * * *
>
> So I was thinking maybe we move the media from New York City to Salem, Massachusetts.
>
> * * *
>
> I've been upfront on this from the very beginning. In my situation, I took the slings and arrows and I told my attorneys we'll abide by what we promised to do. But we are now going to confront everybody in court. That's where we're going to adjudicate, in my situation. We've already filed one lawsuit and we've got others ready to go.

> No more. No more. ... I went on The Today Show knowing that Matt Lauer is going to ask me questions because that's what his NBC bosses wanted him to do. Did I mind those questions? I didn't mind them. I got my say loud and clear. You watch that interview. I got my point across. That's the only thing that I ask when I go on media.
>
> * * *
>
> Again, justice. No American should be abused in any way, shape, or form. If they are, they should go into the court where they can get a hearing. All right. No problem with that. But accusations are not facts. Accusers are not automatically victims. OK. The Duke lacrosse team. Do I have to say any more? I knew some of those families, destroyed because of false accusations that many in the media ran with all day long even though they had no blankin' idea what happened.(emphasis added)

79. The above-false statements by O'Reilly published on November 29, 2017, defamed each of the plaintiffs, all of whom were identified in The New York Times articles cited above, and accused each of them of making false reports of sexual harassment and lying about O'Reilly. Defendant O'Reilly also made it clear that he intentionally and maliciously "got his point" across when defamed plaintiffs on The Today Show.

80. On or about December 14, 2017, in an interview on SKY News in London, Fox News CEO Rupert Murdoch, and co-Executive Chairman of 21st Century Fox, stated that the whole raft of sexual harassment claims at Fox were "nonsense." He admitted "a problem" with "our chief executive" (Roger Ailes), falsely stating that they were "isolated incidents" and falsely stating that Ailes was "out of the place in hours - well three or four days and there's been nothing else since then." Murdoch further stated: "Now of course . . . but that was largely political because we are conservative. Of course, all the liberals are going down the drain. And NBC is in deep trouble. CBS - their stars . . . There are really bad cases that people should be moved aside and there are other which might've been a bit of flirting." In making these statements on behalf of Fox News, Murdoch disparaged and

defamed the plaintiffs. Roger Ailes was not the only harasser at Fox News. Bill O'Reilly harassed, abused or mistreated the three plaintiffs. Murdoch knew that the plaintiffs had valid claims and significant evidence when he disparaged and defamed them. Their claims were never "nonsense" or "flirting" or because Fox News is "conservative." Murdoch, as CEO of Fox News, and co-Executive Chairman of 21st Century Fox, speaks on behalf of defendant Fox News as an authorized spokesperson and binds defendant Fox News with his statements, as well as binding defendant 21st Century Fox with his statements.

81. By disparaging plaintiff Bernstein, defendants Fox News and O'Reilly breached the contract they entered with plaintiff Bernstein in 2002.

82. By making statements other than the statement agreed-upon, defendants Fox News and O'Reilly breached the contract they entered with plaintiff in 2002.

83. As a direct and proximate result of the aforesaid breaches of contract, plaintiff Bernstein has suffered and will continue to suffer damages to her reputation, severe emotional distress, physical sickness, and loss of income.

84. Defendants O'Reilly and Fox are jointly and severally liable for the breach of contract.

COUNT TWO

(DEFAMATION AS TO ALL THREE PLAINTIFFS)

85. Plaintiffs repeat and incorporate the allegations set forth above as if fully set forth herein.

86. Defendants Fox News, 21st Century Fox, and O'Reilly willfully, recklessly and maliciously published the aforesaid statements of and concerning the three plaintiffs (members of a small group clearly identified in the April 1, 2017 New York Times article).

87. Defendants Fox News and 21st Century Fox are directly liable under theories of *respondeat superior* as well as agency for the above-referenced defamatory statements of O'Reilly, all of which were made in the course and scope of his employment and agency relationship with both Defendants Fox News and 21st Century Fox.

88. Defendants Fox News and 21st Century Fox are directly liable under theories of *respondeat superior* as well as agency for the above-referenced defamatory statements made by Rupert Murdock concerning the plaintiffs, and such defamatory statements were were all made in the course and scope of his employment and agency relationship with both Defendants Fox News and 21st Century Fox and made for defendants' benefit.

89. Defendants Fox News and 21st Century Fox are independently liable for their own publishing and re-publishing of the defamatory statements made above, including but not limited to on the Fox website in the link to Sean Hannity's website.

90. Defendants Fox News, 21st Century Fox, and O'Reilly negligently published the aforesaid statements of and concerning the three plaintiffs (members of a small group clearly identified in the April 1, 2017 New York Times article).

91. The aforesaid statements falsely portrayed the plaintiffs as extortionate, politically-motivated liars who were never mistreated and who have wrongfully and willfully harmed Mr. O'Reilly and his children.

92. The aforesaid statements are defamatory because they expose plaintiffs to public contempt, ridicule, aversion and/or disgrace.

93. Defendants' defamatory statements are not protected by any privilege and are defamatory *per se*.

94. Plaintiffs are not public figures.

95. As a direct and proximate result of the aforesaid defamation, plaintiffs have suffered and will continue to suffer damages to their reputations, severe emotional distress, physical sickness, special damages and loss of income.

96. Defendants O'Reilly, Fox News and 21st Century Fox are jointly and severally liable for the defamation.

WHEREFORE, defendants, Fox News, 21st Century Fox and O'Reilly, are jointly and severally liable to the plaintiffs for:

(a) All damages recoverable for all causes of action released in the contract materially breached by defendants;

(b) reputational damages;

© economic damages;

(d) damages for emotional harm and stress;

(e) punitive damages;

(f) attorneys' fees and costs of suit; and

(g) Such other relief as the Court may deem equitable and just including special damages.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury in this action on all claims that are triable by a jury.

SMITH MULLIN, P.C.

BY:_____

NEIL MULLIN
NANCY ERIKA SMITH
(admitted *pro hac vice)*
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Dated: March 30, 2018

EXHIBIT F

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fnewman@hnrklaw.com

September 12, 2016

Andrea Mackris
7500 York Drive
Saint Louis, MO 63105

Dear Ms. Mackris,

As you know, this firm represents Bill O'Reilly. We understand that you have been interviewed by Emily Steel, and perhaps others, concerning Fox News. I write to remind you of the confidentiality undertakings you gave in October, 2004. We will be happy to provide you with another copy of your agreement if you need it.

Please be advised that any breach of the October 2004 agreement will be met with immediate legal proceedings. I trust that will not be necessary.

Very truly yours,

Fredric S. Newman

Fredric S. Newman

P.S.: This letter has been sent to your last known address, as required by the agreement, and to the address we believe is your current one.

Cc: Benedict Morelli, Esq.

AMENDMENT TO CONFIDENTIAL SETTLEMENT AGREEMENT

THIS AMENDMENT ("Amendment") is made by and among Andrea Mackris ("Mackris"), Benedict P. Morelli ("Morelli"), Morelli Ratner P.C., formerly known as Benedict P. Morelli & Associates P.C. including, without limitation, David Ratner, Esq. (the "Morelli Firm"), William O'Reilly ("O'Reilly"), and Fox News Network, L.L.C. ("Fox News").

WHEREAS, the above-mentioned parties are parties to a Confidential Settlement Agreement dated October 28, 2004 ("the October 2004 Agreement"); and

WHEREAS, O'Reilly and Fox News have claimed that Mackris, Morelli and the Morelli Firm have breached the October 2004 Agreement; and

WHEREAS, the parties have engaged in extensive mediation proceedings before Marc Kasowitz as required by the October 2004 Agreement and mutually desire to resolve and settle all disputes among them and to avoid the time, expense and inconvenience of litigation;

NOW, THEREFORE, with the intent to be legally bound hereby and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, IT IS HEREBY AGREED by and among the parties as follows:

1. O'Reilly and Fox News hereby settle, release and waive all alleged breaches of the October 2004 Agreement asserted in the written demand for mediation dated July 18, 2007, sent by Fredric Newman to Mr. Kasowitz, and the written demand for mediation dated July 17, 2007, sent by Ron Green to Mr. Kasowitz, and further state that they are not aware of any other breach of the agreement.

2. Morelli and the Morelli Firm will not represent Rudi Bakhtiar in connection with her claims against Fox News for alleged sexual harassment and retaliation, either formally in litigation or informally in any negotiation or alternative dispute resolution process.

3. To avoid future disputes, Morelli and the Morelli Firm agree that they will not represent any person at any time in any action or proceeding against Fox News (or "the Companies" and their "related persons" as defined in the October 2004 Agreement) arising out of actual or alleged sexual harassment issues.

4. Paragraph 7(f) is hereby amended to add the following two sentences at the end of the paragraph: "In addition, in the event that an arbitration panel or court of competent jurisdiction finds that Morelli or the Morelli Firm has breached any obligation to O'Reilly under this Agreement after November 7, 2007, Morelli

and the Morelli Firm shall pay $100,000 to O'Reilly for each such breach. Any payment under the preceding sentence shall not reduce or otherwise limit the availability of damages or other relief provided to O'Reilly under this Agreement or by law."

5. Strict and complete confidentiality is the essence of this Amendment, and the Confidentiality provisions of the October 2004 Agreement are expressly reaffirmed. To the extent not expressly amended, the parties hereby incorporate by reference, and agree to continue to be bound by, all terms and conditions of the October 2004 Agreement, including but not limited to its provisions regarding confidentiality.

6. This Amendment may be executed in counterparts and delivered by electronic mail in ".pdf" or similar format.

Dated: New York, New York
November 7, 2007

Andrea Mackris

Benedict P. Morelli, individually and
for Morelli Reiner P.C.

William O'Reilly

William O'Reilly by Fredric S. Newman attorney-in-fact

An Authorized Representative of
Fox News Network, L.L.C.

EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: JENNIFER G. SCHECTER PART 57

Justice

ZERVOS, SUMMER

INDEX NO. 150522/2017

MOTION DATE

- V -

TRUMP, DONALD J.

MOTION SEQ. NO. 003

The following papers, numbered 1 to 4, were read on this motion to/for dismiss

Notice of Motion/Order to Show Cause - Affidavits - Exhibits ..... No(s) 1

Answering Affidavits - Exhibits ..... No(s) 2, 3

Replying Affidavits ..... No(s) 4

Cross Motion ..... No

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH THE ACCOMPANYING DECISION

DATED: 3/20/2018

JENNIFER G. SCHECTER, J.S.C.

1. CHECK ONE ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. CHECK AS MOTION IS : ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

----------x

SUMMER ZERVOS,

Plaintiff,

DECISION AND ORDER

Index No. 150522/17

-against-

DONALD J. TRUMP,

Defendant.

----------x

JENNIFER G. SCHECTER, J.:

In *Clinton v Jones*, 520 US 681 (1997), the United States Supreme Court held that a sitting president is not immune from being sued in federal court for unofficial acts. It left open the question of whether concerns of federalism and comity compel a different conclusion for suits brought in state court. Because they do not, defendant's motion to dismiss this case or hold it in abeyance is denied.

Background

On this motion to dismiss the complaint, the court must accept the facts alleged by plaintiff to be true (*Davis v Boeheim*, 24 NY3d 262, 268 [2014]).

In 2005, plaintiff Summer Zervos, a California resident, was a contestant on *The Apprentice*, a reality show starring and produced by defendant Donald J. Trump (Affirmation in Support [Supp], Ex 19 [Complaint] at ¶ 19). After defendant

"fired" her on the program, plaintiff continued to seek him out for advice and to pursue job opportunities (*id.* at ¶ 21).

In 2007, plaintiff met with defendant at his New York office. He allegedly kissed her twice on the lips, making her "uncomfortable, nervous and embarrassed" (*id.* at ¶ 26). The next time she saw defendant was after he called her and asked her to meet him at the Beverly Hills Hotel for dinner at a restaurant (*id.* at ¶ 27). When plaintiff arrived, she was escorted to defendant's bungalow and waited for him in the living-room area (*id.* at ¶ 28). After 15 minutes, defendant emerged from his bedroom, kissed Ms. Zervos "open mouthed" and pulled her toward him (*id.* at ¶ 29). He asked her to sit next to him, "grabbed her shoulder, again kissing her very aggressively, and placed his hand on her breast" (*id.* at ¶ 29). After plaintiff pulled back and walked away, defendant took her hand and led her into the bedroom (*id.* at ¶ 30). When plaintiff walked out, he turned her around and suggested that they "lay down and watch some telly telly" (*id.*). He embraced her and plaintiff pushed him away, telling him to "get real" (*id.* at ¶ 30). He then repeated plaintiff's words

back to her lasciviously and "began to press his genitals against her, trying to kiss her again" (*id.* at ¶ 30).

After plaintiff told defendant that she had come to see him for dinner, defendant "paced around the room and seemed angry" (*id.* at ¶ 31). The two had dinner, which abruptly ended when defendant stated that he needed to go to bed and told plaintiff to meet him the next day at his golf course (*id.* at ¶ 34). Plaintiff immediately went to discuss what had happened with her father and to get his advice (*id.* at ¶ 35). She decided to go ahead with the meeting (*id.*).

The following day, plaintiff had limited interaction with defendant who introduced her to the general manager of the golf course (*id.* at ¶ 36). Later that week, the manager offered plaintiff a job at half the salary that she had been seeking (*id.* at ¶ 38). Plaintiff called defendant and told him that she "was upset, because it felt like she was being penalized for not sleeping with him" (*id.* at ¶ 39).

In 2009 and 2010, plaintiff continued seeking employment within the Trump organization to no avail (*id.* at ¶ 40). She believed that defendant's "sexually inappropriate misconduct . . . at the Beverly Hills Hotel was either a test or an

isolated incident" (*id.* at ¶ 42). In 2016, plaintiff emailed defendant "that their past encounter had been hurtful and embarrassing" (*id.* at ¶ 43). She never received a response (*id.*).

In July 2016, defendant was selected as the presidential nominee for the Republican party (*id.* at ¶ 44).

On October 7, 2016, footage from the television show *Access Hollywood* was made public that depicted defendant telling the program's host: "'I just start kissing [women] . . . Just kiss. . .. I don't even wait. And when you're a star, they let you do it. You can do anything. . . . Grab them by the pussy. You can do anything'" (*id.* at ¶¶ 1, 4). During a presidential debate two days later, defendant denied engaging in the behavior that he had discussed on tape and characterized his words as "locker-room talk" (*id.* at ¶ 48).

Plaintiff subsequently "chose to come forward and to speak publicly . . .. She felt that telling the world of her specific experiences . . . was ethically the right thing to do, so that the public could evaluate Mr. Trump fully as a candidate for president" (*id.* at ¶ 50). On the afternoon of October 14, 2016, plaintiff along with her counsel held a

press conference at which she "publicly described her interactions with Mr. Trump in detail, including his unwanted sexual misconduct" (*id.* at ¶ 53).

That very day, defendant responded in a statement that was widely reported and appeared on his campaign website: "'To be clear, I never met her at a hotel or greeted her inappropriately a decade ago. That is not who I am as a person and it is not how I've conducted my life'" (*id.* at ¶ 55). Later on, at a North Carolina campaign rally, defendant stated "'these allegations are 100% false . . . They are made up, they never happened . . . It's not hard to find a small handful of people willing to make false smears for personal fame, who knows maybe for financial reasons, political purposes, or for the simple reason they want to stop our movement. They want to stop our campaign. Very simple. These claims defy reason, truth, logic, common sense. They're made without supporting witnesses. No witnesses. Hey you know, 28 years ago, 10 years ago, 14 years ago, 12 years ago. Not me. Believe me. Not me. Not me" (*id.* at ¶ 59; Supp, Ex 3 at 2-3).

At a rally in New Hampshire on October 15, 2016, defendant reported that plaintiff's cousin "wrote a letter that what she said is a lie" (Supp, Ex 8 at 2). He stated that many of the allegations against him had already been "proven so false," referred to another story in the media about him and insisted: "we can't let them get away with this . . .. Total lies. . .. [You've] been seeing total lies" (*id.*). He said "you have phony people coming up with phony allegations, with no witnesses whatsoever" (*id.* at 3).

He tweeted about "100% fabricated and made up charges" and that nothing "ever happened with any of these women. Totally made up nonsense to steal the election" (Complaint at ¶¶ 60, 63). He lamented over Twitter about losing large numbers of women voters "based on made-up events that never happened" (*id.* at ¶ 66).

On October 17, 2016, defendant tweeted: "Can't believe these totally phony stories, 100% made up by women (many already proven false) and pushed big time by press, have impact!" (Supp, Ex 12). He also re-tweeted a statement by someone else about plaintiff, which included a picture of her and set forth "this is all yet another hoax," adding his own

comment: "Terrible" (Complaint at ¶ 69; Supp, Ex 13). At 4:31 that afternoon, defendant tweeted: "New polls are good because the media has deceived the public by putting women front and center with made-up stories and lies, and got caught" (Supp, Ex 14).

At the next presidential debate, on October 19, 2016, defendant answered a question about reports by nine women of nonconsensual kissing or groping (Complaint at ¶ 73; Supp, Ex 17 at 19/37). He stated: "those stories are all totally false. . . . I didn't know any of these women. I didn't see these women. These women, the woman on the plane, the woman on the--I think they want either fame or [the Clinton] campaign did it. . . . I believe . . . [Hillary Clinton] got these people to step forward. If it wasn't, they get their ten minutes of fame, but they were all totally--it was all fiction. It was lies and it was fiction" (Complaint at ¶ 73; Supp, Ex 17 at 20/37).

Finally, on October 22, 2016, at a Pennsylvania rally, defendant declared: "Every woman lied when they came forward to hurt my campaign, total fabrication. The events never

happened. Never. All of these liars will be sued after the election is over" (Complaint at ¶ 74).

On January 17, 2017, plaintiff commenced this action, alleging that defendant made defamatory statements about her "knowing they were false and/or with reckless disregard for their truth or falsity" (*id.* at ¶ 78). She asserts that as a direct result of the false statements and being "branded a liar who came forward only for fame or at the manipulation of the Clinton campaign," she suffered emotionally and financially (*id.* at ¶¶ 80-82). She pleads that defendant's statements contained numerous false representations about her, "including that [her] description of being subjected to unwanted sexual touching by defendant was a lie, phony, a hoax and 'made up,' and that [she] was motivated by fame and/or directed by Clinton or the Democrats" (*id.* at ¶ 85). She contends that she "suffered at least $2,914" in financial losses because her restaurant lost business (*id.* at ¶ 81).

Three days after this action was filed, defendant became the 45th President of the United States. He now moves for dismissal or for a continuance of this case until he leaves office. Because there is no authority for delaying

adjudication and because plaintiff has stated a cause of action, defendant's motion is denied.

Analysis

No one is above the law. It is settled that the President of the United States has no immunity and is "subject to the laws" for purely private acts (*Clinton*, 520 US at 696). In *Clinton v Jones*, the United States Supreme Court made clear that "immunities are grounded in 'the nature of the function performed, not the identity of the actor who performed it'" (*id.* at 695 [citation omitted]). There, the Court required then-President William Jefferson Clinton to defend against a civil-rights action that included a state-law defamation claim in federal court. The Court concluded that the President was subject to suit because regardless of the outcome there was no "possibility that the decision [would] curtail the scope of the official powers of the Executive Branch" (*id.* at 701). It explained that the "litigation of questions that relate entirely to the unofficial conduct of the individual who happens to be the President poses no perceptible risk of misallocation of either judicial power or executive power"

(*id.*). In holding that the doctrine of separation of powers did not mandate a stay of all private actions against the President, the Court flatly rejected that "interactions between the Judicial Branch and the Executive, even quite burdensome interactions, necessarily rise to the level of constitutionally forbidden impairment of the Executive's ability to perform its constitutionally mandated functions" (*id.* at 702).

The rule is no different for suits commenced in state court related to the President's unofficial conduct. Nothing in the Supremacy Clause of the United States Constitution even suggests that the President cannot be called to account before a state court for wrongful conduct that bears no relationship to any federal executive responsibility. Significantly, when unofficial conduct is at issue, there is no risk that a state will improperly encroach on powers given to the federal government by interfering with the manner in which the President performs federal functions. There is no possibility that a state court will compel the President to take any official action or that it will compel the President to refrain from taking any official action.

To be sure, in pointing out that proceedings in state court may warrant a different analysis from those in federal court, each and every one of the concerns that the United States Supreme Court raised implicates unlawful state intrusion into federal government operations (*id.* at 691 n 13, citing *Hancock v Train*, 426 US 167 [1976] [federal agencies' operations could not be conditioned on obtaining state permits]; *Mayo v United States*, 319 US 441, 445, 447 [1943] [a state cannot lay fees or exact money on a United States instrumentality as "the federal function must be left free"]; *see also Matter of Armand Schmoll, Inc. v Federal Reserve Bank of N.Y.*, 286 NY 503, 509 [1941] [a state court may not "control the manner in which a federal agency performs or attempts to perform its functions and duties. . . . Assumption of such power would hamper orderly government and ignore the division of fields of government of state and nation created by the Constitution"] *cert denied* 315 US 818 [1942]).[1] Those

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[1] The cases defendant relies on are no different (*see Tennessee v Davis*, 100 US 257, 267 [1879] [statute authorizing removal of actions against federal officers engaged in official duties is "no invasion of state domain"]; *Tarble's Case*, 80 US 397 [1871] [state judge could not intrude with operations of federal government by discharging a prisoner held under the authority of the

concerns are nonexistent when only unofficial conduct is in question.

Nor is there any legitimate fear of local prejudice in state court when the actions under review bear no relationship to federal duties (*Clinton*, 520 US at 691, citing 28 USC § 1442[a] [authorizing removal from state to federal court of actions against officials "for or relating to any act under color of such office"]; *Mesa v California*, 489 US 121, 139 [1989] [explaining that in cases where "true state hostility may have existed, it was specifically directed against federal officers' efforts to carry out their federally mandated duties"]; *see also Watson v Philip Morris Cos., Inc.*, 551 US 142, 150 [2007] [purpose of removal statute is to "protect the federal government from the interference with its 'operations'"]).

There is no reason, moreover, that state courts like their federal counterparts will be "either unable to accommodate the President's needs or unfaithful to the

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United States]; *McClung v Silliman*, 19 US 598, 605 [1821] [state court cannot issue writ of mandamus compelling federal officer to take governmental action]).

tradition . . . of giving 'the utmost deference to Presidential responsibilities'" (*Clinton*, 520 US at 709). State courts can manage lawsuits against the President based on private unofficial conduct just as well as federal courts and can be just as mindful of the "'unique position in the constitutional scheme' that the office occupies" (*id.* at 698).

Additionally, and for the very same reasons articulated in *Clinton v Jones*, a stay for the duration of the Trump presidency must be denied. A lengthy and categorical stay is not justified based on the possibility that, at a moment's notice, the President may have to attend to a governmental or international crisis. If and when he does, of course, important federal responsibilities will take precedence.

In the end, there is absolutely no authority for dismissing or staying a civil action related purely to unofficial conduct because defendant is the President of the United States. Resolution of an action unrelated to the President's official conduct is the responsibility of a state court and is not impermissible "direct control . . . over the President" (*Clinton*, 520 US, 691 n 13). Congress, moreover, has enacted legislation deferring civil litigation under

circumstances it felt appropriate (*see* 11 USC § 362 [bankruptcy stay]; 50 USC § 3901 *et seq.* [staying proceedings against servicemembers during military service]). Even after *Clinton v Jones*, decided more than 20 years ago, Congress has not suspended proceedings against the President of the United States and there are no compelling reasons for delaying plaintiff's day in court here.

Dismissal of the complaint for failure to state a cause of action is also denied as the "pleading meets the minimal standard necessary" to proceed (*see Davis*, 24 NY3d at 268).[2] Plaintiff's complaint is based on assertions made by defendant, that if proven false, form the predicate for a

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[2] New York law applies. Defendant has not established that there is a conflict between substantive New York and California defamation law (*K.T. v Dash*, 37 AD3d 107, 111 [1st Dept 2006]). The only difference defendant points out is California's anti-SLAPP provision, which is a procedural statute enacted as part of California's code of civil procedure and has no applicability here (*see* Cal Civ Proc Code § 425.16[j][1] [requiring transmission of papers to California's Judicial Council]; *see also Liberty Synergistics Inc. v Microflo Ltd.*, 718 F3d 138, 154 [2d Cir 2013] [explaining that "California courts have repeatedly held . . . that California's anti-SLAPP rule is 'procedural' in nature" and applies in California courts regardless of which source of law governs a plaintiff's substantive claim]; *Kibler v Northern Inyo County Hosp. Dist.*, 39 Cal 4th 192, 202, 46 Cal Rptr 3d 41, 47, 138 P3d 193, 198 [2006] [anti-SLAPP statute is a "procedural device"]).

The statements here weigh even more heavily against dismissal of the complaint. Defendant--the only person other than plaintiff who knows what happened between the two of them--repeatedly accused plaintiff of dishonesty not just in his opinion but as a matter of fact. He not only averred that plaintiff told "phony stories" and issued statements that were "totally false" and "fiction," he insisted that the events "never happened" and that the allegations were "100% false [and] made up."[3] A reader or listener, cognizant that defendant knows exactly what transpired, could reasonably believe what defendant's statements convey: that plaintiff is contemptible because she "fabricated" events for personal gain (*see Divet v Reinisch*, 169 AD2d 416 [1st Dept 1991] [libelous character of statement "derives from the fact that it charges

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[3] Accepting the allegations in the complaint as true, the challenged statements were "of and concerning" plaintiff. Some of the statements referred to "every woman" who came forward--"a particular, specifically-defined group of individuals" that a jury could find included plaintiff (*see Three Amigos SJL Rest., Inc. v CBS News Inc.*, 28 NY3d 82, 86-87 [2016]; *see also Gross v Cantor*, 270 NY 93, 96 [1936]). The context of other statements--some of which were made days after plaintiff's press conference, related to allegations raised at her press conference or mentioned plaintiff and her family--similarly raise jury questions as to whether they pertained to her.

maintainable defamation action (*Gross v New York Times Co.*, 82 NY2d 146, 154 [1993]).

A false statement tending "to expose a person to public contempt, hatred, ridicule, aversion or disgrace constitutes defamation" (*Davis*, 24 NY3d at 268). In *Davis v Boeheim*, the Court of Appeals determined that a defamation action could be maintained against a defendant who called individuals claiming to have been victims of sexual abuse liars and stated that he believed that they were motivated by money to go public (*Davis*, 24 NY3d 262 [reinstating defamation action against someone who *may* have known undisclosed facts about alleged sexual abuse]). The Court concluded that the statements were susceptible to a defamatory connotation because they communicated that defendant had information unknown to others that justified his statements that the individuals were neither credible nor victims of abuse (*id.* at 272). Defendant in *Davis* "appeared well placed to have information about the charges" and the context of the statements suggested that he "spoke with authority and that his statements were based on facts" (*id.* at 273).

(individuals) in writing with being liars and is thus actionable on its face"]).

Defendant used "specific, easily understood language to communicate" that plaintiff lied to further her interests (*Davis*, 24 NY3d at 271). His statements can be proven true or false, as they pertain to whether plaintiff made up allegations to pursue her own agenda (*id.*). Most importantly, in their context, defendant's repeated statements--which were not made through op-ed pieces or letters to the editor but rather were delivered in speeches, debates and through Twitter, a preferred means of communication often used by defendant--cannot be characterized simply as opinion, heated rhetoric or hyperbole.[4] That defendant's statements about plaintiff's veracity were made while he was campaigning to become President of the United States, does not make them any less actionable (*see Silsdorf v Levine*, 59 NY2d 8, 16 [1983] [explaining that "concern over undue limitations upon

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[4] *Contrast Jacobus v Trump*, 156 AD3d 452, 453 (1st Dept 2017) (holding that the statement that plaintiff, a political strategist, "begged" for a job, was "too vague, subjective and lacking in precise meaning . . . to be actionable [and that its] immediate context would signal to a reasonable reader or listener" that it was an opinion and not fact).

expression in the course of political campaigns" by allowing a defamation action to proceed was "misplaced"], *cert denied* 464 US 831 [1983]).[5]

Because there is a reasonable view of the claim upon which plaintiff would be entitled to recover for defamation, the complaint sufficiently states a cause of action (*Davis*, 24 NY3d at 274).

Accordingly, it is

ORDERED that defendant's motion is denied; it is further

ORDERED that defendant is to answer within 10 days of notice of entry of this order (*see* CPLR 3211[f]).

This is the decision and order of the court.

Dated: March 20, 2018

HON. JENNIFER G. SCHECTER

[5] Plaintiff's complaint, like the one in *Silsdorf*, sufficiently alleges actual malice (*Silsdorf*, 59 NY2d at 17).

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
INDEX NO. CV-17-9483

RACHEL WITLIEB BERNSTEIN, ANDREA MACKRIS, and REBECCA GOMEZ DIAMOND Plaintiffs, Vs. BILL O'REILLY and FOX NEWS NETWORK, LLC, Defendants.	TRANSCRIPT OF PODCAST October 23, 2017

TRANSCRIPT ORDERED BY:
SMITH MULLIN, P.C.

Transcriber: Maria Georgeles, C.C.R.,AD/T 655
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(Please note, anything in quotations was, From the recorded interview.)

MR. BARBARO: From the New York times, I'm Michael Barbaro. This is The Daily.

Today, 'it's horrible what I went through.' Bill O'Reilly goes on the record to discuss the sexual harassment allegations that cost him his job at Fox News and explains new reporting that shows yet another settlement he reached with a woman, this one for 32 million dollars.

It's Monday, October 23rd. My colleagues, Emily Steel and Michael Schmidt, have been reporting the sexual harassment charges against former Fox News host Bill O'Reilly for more than a year.

Emily and Michael, thank you for coming on.

MS. STEEL: Thank you.

MR. SCHMIDT: Thanks for having us.

MR. BARBARO: So, the last time that we heard from you both, you had reported settlements in five harassment allegations against Bill O'Reilly. There was reporting that led to O'Reilly's ouster at Fox News. What's happened since that reporting?

MS. STEEL: So we've learned about a settlement that Bill O'Reilly reached in January with a woman named Lis Wiehl for 32 million dollars.

MR. BARBARO: 32 million dollars.

MS. STEEL: Right, at Fox News. It's the biggest deal that has been publicly reported over allegations of sexual harassment. It also brings the total amount of payouts to about 45 million dollars for settlements that involved O'Reilly and sexual harassment allegations against him.

MR. BARBARO: So the total price that he's paid, or his employer has paid for allegations that he sexually harassed woman is 45 million dollars.

MS. STEEL: That's what reporting shows.

MR. SCHMIDT: Correct. In the larger context here is that, Fox knew about all of this, except that they say they didn't know about the size of the Lis Wiehl deal when they gave him a contract extension in February.

Now, the important thing is that Fox News never investigated these accusations, and they never asked O'Reilly's lawyers what the dollar figure was.

MS. STEEL: Something interesting about that though is that the woman that he reached the settlement with was a 15 year legal analyst at Fox News.

MR. BARBARO: So there was -- it sounds like a pretty meticulous attempt by Fox to take this

out of the realm of employment law and of employee relations.

MR. SCHMIDT: Their rational was, oh, this is an O'Reilly personal problem, he's going to deal with that.

MS. STEEL: Because at that same time, O'Reilly's contract was up for renewal at the end of the year. And if any details about this had become public, if the lawsuit had been filed, if any details of the settlement had become public, it really could threaten or jeopardize his contract and his deal with the company.

MR. SCHMIDT: So in the period of time where you would think that Fox would be digging into these accusations and saying, hey, is this true, what's going on here, what's really going on is that they're starting to negotiate with O'Reilly about a contract extension, because what's happening is that Megyn Kelly has just left Fox.

"A VOICE: She is the only woman with a weekday prime time show on Fox News channel. Now Megyn Kelly is bolting Fox for NBC.

A VOICE: Both NBC and Kelly's publicist confirm the move, which the New York Times first

reported."

MR. SCHMIDT: So they look at O'Reilly, who's eight o'clock, he starts off the evening lineup there, and they say, well, Megyn Kelly just walked out the door. We've got to make sure that O'Reilly, whose contract is up at the end of the year, we've got to make sure that he's here for four more years.

MR. BARBARO: So the woman that this settlement was with, Lis Wiehl, what is her relationship exactly to Bill O'Reilly? What do we know about her?

MS. STEEL: Yeah. So Lis Wiehl is a Harvard Law School graduate. She appeared frequently on his program. She appeared regularly in the segment called, Is It Legal.

"MR. O'REILLY: All right. So he's given, according to this, $10,000 tips to the dancers."

MS. STEEL: There's this exchange on his radio program. They're talking about a strip club.

"MR. O'REILLY: Do you dance?

LISA WIEHL: No.

MR. O'REILLY: You can't dance?
LIS WIEHL: I cannot dance.
MR. O'REILLY: Don't you think it might be worth learning how?
LIS WIEHL: No. For $10,000?
MR. O'REILLY: Yeah. I'm talking about, you're a good looking girl. I'm telling you that. I mean, you haven't seen Lis on TV. She's a good looking blond, and she's on the radio.
LIS WIEHL: No, thank you.
MR. O'REILLY: $10,000 for doing a little dance.
LIS WIEHL: No thanks.
MR. O'REILLY: No?
LIS WIEHL: No."

MR. BARBARO: And what exactly is Wiehl alleging took place?
MS. STEEL: Among Wiehl's allegations are that Bill O'Reilly sexually harassed her repeatedly over her 15 years at the network.
In addition, she said that he sent her sexually explicit materials that included pornographic information, and gay pornography.
MR. BARBARO: That he sent her --

MS. STEEL: That he sent her.
MR. BARBARO: -- this material?
MS. STEEL: That's what she said.
MR. BARBARO: And how did O'Reilly respond to your latest reporting about this settlement, its size, its very existence?
MR. SCHMIDT: Well, he wanted to engage us, and he agreed to sit down with us for an On the Record interview.
MR. BARBARO: Was that a surprise?
MR. SCHMIDT: I think that O'Reilly has wanted to engage us since back in April. But what we had told him in April and we told him this time, was that, we will do an interview, but it all has to be on the record.
MR. BARBARO: Meaning all for quotation, nothing to be kept between you two?
MR. SCHMIDT: Correct. Correct.
MR. BARBARO: So where did you guys actually meet O'Reilly?
MR. SCHMIDT: On Wednesday morning, Emily and I left the Times building and we walked directly down 40th Street to O'Reilly's lawyer's office on the East Side, and we went up to the 35th floor, where we were brought into a fairly small conference room that

overlooked the East River and the Met Life building, and we waited for O'Reilly to arrive.
MR. BARBARO: Emily, I have to wonder what you're thinking as you sit there, waiting. This is a man who views you and the reporting you did as having ended his career at Fox.
MS. STEEL: I guess one of the things walking into the interview that I was a little bit nervous about is, kind of how combative he might be given that since his ouster from the network, he has said that he wished that he had fought harder against the forces that led to his dismissal. And he has denied the allegations, and he has attacked some of the woman who have made allegations against him.
And so, I really didn't know how he was going to respond, but I thought that it would be pretty combative and pretty aggressive.
MR. SCHMIDT: I had a different perspective going into it, and my assumption going into it, was like, you know, this was going to be tough, and this is obviously not an easy thing to talk about, but we're all adults and we can act like adults, and we can ask tough questions and have a discussion about this. And I thought it would be a fairly, straightforward, tough interview, but fairly normal.

"A VOICE: Okay. Are we all on the record? Are we all ready to go?
MS. STEEL: Yup. Ready to go.
MR. SCHMIDT: Yeah."

MR. SCHMIDT: It was pretty clear from the moment they walked in the room that this was not going to be a normal interview. The handshake was sort of muted, it was a very sort of quick, sort of handshake, and he quickly retreated back to the other side of the room and sat down.
MS. STEEL: We, Mike and I, sat on one side of the table and he sits on the other in between his two lawyers, and O'Reilly kind of leans back in his chair and crosses his legs, and puts his hands -- he kind of clasps them on top of his stomach.
MR. SCHMIDT: He had a very angry look on his face. He was staring directly at me. He wouldn't even look at Emily.
MR. BARBARO: The entire time?
MS. STEEL: At some points he did, but for most of the time he either wasn't looking at us or he would look at Mike.
MR. SCHMIDT: So we're sitting on one side, he's on the other, I look up to sort of start

talking, and he's staring directly at me, as harshly or as strongly as anyone has ever looked at me, and I've got to sort of start this interview.

"MR. SCHMIDT: Well, thanks a lot for sitting down with us. We really appreciate it. And –"

MR. SCHMIDT: Emily and I talked about it before, that I would just sort of take the lead and sort of trying to get it going to just sort of, hey, you know, we're here to learn as much as we can.

"MR. SCHMIDT: You know, I guess we just start, you know, just by asking, you know, there's just been a lot that's obviously gone on in the past six months. Just to see what your take is, just on any of it."

MR. BARBARO: And how did O'Reilly respond to that overture?

MR. SCHMIDT: It was very clear that this was not going to be a discussion.

"MR. SCHMIDT: Is there anything in our

April story that you want to address with us, or you want to address on the record?

MR. O'REILLY: Just that your figures are wrong.

MR. SCHMIDT: That they're too high or too low or --

MR. O'REILLY: Just wrong.

MR. SCHMIDT: The figures are wrong?"

MR. SCHMIDT: I just wanted an answer from him. I was like, okay, how is this wrong? And he wouldn't clarify it for us.

"MR. O'REILLY: In fact, the first article you're making assumptions. Making assumptions. Your assumptions in the first article were wrong.

MR. SCHMIDT: Which ones?

MR. O'REILLY: The figures that you used were wrong, and then they were widely quoted all over the place. So you're doing the same thing here. You're assuming that what you've been told is correct.

MR. SCHMIDT: And, is there anything you can tell us about how the original figures were wrong?

A VOICE: Well, again, it's all -- I don't want to make this boring, but, you know, we're not --

MR. O'REILLY: Leaks are not facts. Leaks are designed to hurt people, and surely you both know that."

MS. STEEL: The other thing that was interesting is, he tried to depict himself as the victim, that he was the target of these allegations because he's a famous person, and that part of the reason why he has come to settlements is -- is to protect his children. He didn't want his name and these allegations kind of paraded in the press in a way that could harm his family.

"MR. O'REILLY: Well, it's been a horrendous experience. I've been in the broadcast business, journalism business for 43 years. I've never had one complaint filed against me by a coworker, in any human resources department in 43 years. And that encompasses 12 different companies.

So, all of a sudden, all this stuff happens, and the pain it brings to my children is indescribable. Indescribable. And I would give up my life to protect my children, but I find myself not

being able to protect them because of things that are being said about me, their father."

MS. STEEL: He talked about this experience, a really sad and awful experience that happened over the summer. There's a Fox News host named Eric Bolling, who was fired from the network after allegations were made against him.

MR. BARBARO: Of sexual harassment.

MS. STEEL: Of sexual harassment, and his son later passed away, and O'Reilly said --

"MR. O'REILLY: I urge you to think about what you put in your newspaper. Eric Bolling's son is dead. He's dead. Because of allegations made, in my opinion, and I know this to be true, against Mr. Bolling. No game."

MR. BARBARO: Is he -- what is he communicating to you there?

MR. SCHMIDT: He's saying, look, you guys, in what you publish could have an enormous impact on things far beyond your control. You better think twice.

MS. STEEL: He says that there is a left

wing conspiracy that was behind his ouster, and that he has been organizing a legal team to get the truth out to the American people.

MR. SCHMIDT: But what's different today than on the day that we wrote this story, is the Harvey Weinstein stuff. So there's been all these disclosures recently about Harvey Weinstein. O'Reilly has made the argument that this is a liberal conspiracy against him. But in the interview with us, he sort of leaned into that, but not too much.

"MR. O'REILLY: After your story broke, it was an almost immediate boycott of more than 90 sponsors. That has to be organized. That can't just happen spontaneous. They bragged about it, bringing me down."

MR. SCHMIDT: Because, he could say, oh, this is a liberal conspiracy against me, but Harvey Weinstein, this big democratic donor, has been the subject of another Times story that's laid out the similar things.

So he could only go so far on the liberal stuff, and he never attacked the Times. He never said, oh, the Times has a vendetta that's out to get

us. It's about us just sort of following the facts.

"MR. O'REILLY: Surely you understand that any kind of trial or court action is going to bring horror to a famous person. Surely you understand that. It's not going to be reported accurately, it's going to be used. And I will go back to my children. So, when situations arose, we handled them as methodically and as responsibly as we could without putting my children in grave danger."

MR. BARBARO: As you're describing O'Reilly's attempts to make himself human, and to raise the stakes of all this, I wonder if you believe that the reason he met with you is because this was his last hope, which was that you would feel badly for him somehow and maybe not run the story, or not run certain elements of it. Is that your read.

MR. SCHMIDT: I still don't know why he sat down with us. I'm still not sure. I think he knew he wasn't going to get us to kill the story. I think he was concerned about the gay pornography stuff. I think that he also still thinks that he can bully folks into doing things that he wants.

"MS. STEEL: One thing that I think is important to address with regards to the allegations that Lis Wiehl made against you, Mr. O'Reilly, was that you sent her pornographic material, including gay pornography that featured men. We wanted to give you a chance to comment on that."

MR. BARBARO: What did O'Reilly say about the specific allegations brought by Lis Wiehl?

MS. STEEL: What he said is that when he worked at Fox News --

"MR. O'REILLY: I was threatened almost every day of my life."

MS. STEEL: And that some of those threats included these messages and e-mails that included explicit material.

MR. BARBARO: Hm-hmm.

MS. STEEL: And so what he said is that he had set up this system where, when he would receive this explicit material, he would send it to his lawyer, and his lawyer would review it to see whether he needed to do anything about that.

"MR. O'REILLY: Any other dubious stuff, whether they be pictures or obscene poems, or some ravings of somebody or whatever, went to my counsel."

MS. STEEL: And he said that Lis Wiehl was acting as one of his lawyers.

MR. BARBARO: So she is both a legal analyst on Bill O'Reilly's show, and she is actually Bill O'Reilly's lawyer. Is that right?

MR. SCHMIDT: Well, it seems like she may have provided him some legal advice on some matters, including a matrimonial issue that he was litigating. But there's not a lot of evidence beyond that, that this was a traditional lawyer/client relationship.

MR. BARBARO: So he's saying that among the things that were sent to him, that he forwarded on to Lis Wiehl, as his lawyer, is gay pornography.

MR. SCHMIDT: We have learned that Lis Wiehl was sent a lot of explicit materials by O'Reilly. She thought it was sexual harassment. It deeply bothered her, and we know that the large amount of this stuff is what really concerned O'Reilly and led him to pay 32 million dollars in a deal that was negotiated in a span of just a few days, which is remarkable.

MR. BARBARO: If Fox knew about the settlement, as your reporting suggesting it did, and it still renewed O'Reilly's contract for 25 million dollars a year, what ultimately led to his firing?

MS. STEEL: We've obtained this internal e-mail from the top lawyer at Fox --

MR. SCHMIDT: It's two weeks after our story. The general counsel says to the Murdochs, look, the feds have come to us. They want information about all of O'Reilly's settlements. We can fight it, but we're going to have to turn it over most likely. There's very little chance we're going to have to not do this. And that, after we turn it over, you should expect that the feds are going to leak this within the next 30 to 60 days. So as you move forward, keep that in your mind. And six days later, Bill O'Reilly is fired.

MS. STEEL: The other interesting thing that's happening at that time period, too, in the Murdoch empire, that company had made this 15 billion dollar bid to buy Sky, which is this satellite company that's a giant in Europe, that the Murdochs have long coveted. And the regulators are reviewing that deal, and issues related to O'Reilly have come up during some of those meetings, during some of

those discussions.

MR. BARBARO: So what you're outlining between the Sky deal, the federal investigation, is the specter of just tremendous reputational damage, as well as financial problem.

MR. SCHMIDT: It's public pressure and business pressure.

MR. BARBARO: That leads to O'Reilly's --

MR. SCHMIDT: That were bearing down on them in the weeks after our story ran.

"MR. SCHMIDT: I think that's all the questions we have, unless there's anything else you guys have or --

MR. O'REILLY: We don't have any questions for you. No."

MR. BARBARO: Finally, Mike, on your way out the door on Wednesday, what happens?

MR. SCHMIDT: We get through the interview, and stand up. I think we stand up assuming that we would shake O'Reilly's hand and sort of walk out.

"MR. O'REILLY: You know, we appreciate you guys getting down and -- thank you."

MS. STEEL: Thank you.

MR. SCHMIDT: Okay. All right."

MR. SCHMIDT: So we had lugged this special recorder from The Daily and brought it with us. So we had the high quality audio, and we stand up and we turn off that recorder. We still were recording on our phones, and at that point, O'Reilly wants to make a last point.

"MR. O'REILLY: (Indiscernible) really wanted to know the truth, you let him tell you on background."

MR. SCHMIDT: And it's at that point that he gets as animated as I've ever seen anyone in any type of interview that I've been in.

"MR. O'REILLY: -- is we have physical proof that this is bullshit. Bullshit. Okay? So, it's on you, if you want to destroy my children further. All right? Because it's all crap."

MS. STEEL: It's almost like you can feel the vibrations in your own chest.

"MR. O'REILLY: So why don't you be human beings for once. This is horrible, horrible what I went through, horrible what my family went through. This is crap, and you know it. It's politically and financially motivated, and we can prove it, with shocking information.

But I'm not going to sit there in a courtroom for a year and a half and let my kids get beaten up every single day of their lives by a tabloid press who would sit there, and you know it.

MR. SCHMIDT: All right. Thank you.

MS. STEEL: Thank you for your time."

MR. SCHMIDT: And then, instead of walking to the side of the table to shake our hands, he heads towards the window, takes a deep breath, you know, an angry deep breath, looks out the window, and his lawyer says, you know, okay, thanks for the meeting, and we're shown the door.

MR. BARBARO: So the last images of Bill O'Reilly, his back toward you --

MR. SCHMIDT: Looking out the window.

MS. STEEL: Looking out the window, onto the east river.

MR. BARBARO: Mike, Emily, thank you both

very much.

MS. STEEL: Thank you.

MR. SCHMIDT: Thanks for having us.

MR. BARBARO: Over the weekend, the times reported that another of Lis Wiehl's allegations against Bill O'Reilly was a nonconsensual sexual relationship.

(Whereupon, this ends the requested portio of the podcast.)

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EXHIBIT I

AUDIO-RECORDED INTERVIEW
OF
BILL O'REILLY BY GLENN BECK
VIA *THE GLENN BECK PROGRAM*

MONDAY, OCTOBER 23, 2017

Transcription of the interview of BILL O'REILLY by Glenn Beck, as transcribed by Michele Quick, a Registered Merit Reporter, Certified Realtime Reporter and Certified Court Reporter of the State of New Jersey.

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MR. BECK: Friend of the program and a friend of mine, Bill O'Reilly. Welcome, sir. How are you?

MR. O'REILLY: Taking a beating but, uh, still standing.

MR. BECK: So, Bill, you and I spoke over the weekend and I said to you --

MR. O'REILLY: Right.

MR. BECK: -- that I wanted to ask you some honest questions and, uh, and, uh, and just personal for me because I, you know, I don't know and anybody can lie to anybody but you would be, um, I mean, you would be one of the greatest liars, uh, ever because of the consistency of your lies, if you were lying to me, uh, and the consistency of your behavior around me and, uh, my staff, which we have toured together, uh, I have --

MR. O'REILLY: Sure.

MR. BECK: -- I have seen you on Friday nights, I have seen you in hotels, I -- my staff has, and I have women that work for me and we've never had any problem whatsoever or an inkling that you might be one of those guys.

MR. O'REILLY: Yeah, well, I was in the, uh, I have been in the broadcast business for

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43 years, 12 different companies. Never one time was there any complaint filed against me with Human Resources or anybody's legal team, nothing, zero.

MR. BECK: Megyn Kelly --

MR. O'REILLY: So I think the track record speaks for itself and I think that people, when they look at the statement that we have posted on billoreilly.com, when they look at the affidavit and now the three letters that I sent you -- did you get the letters from Gretchen Carlson --

MR. LAUER: I did.

MR. O'REILLY: -- and Megyn Kelly?

MR. BECK: I wanted to know if --

MR. O'REILLY: Okay.

MR. BECK: -- I was allowed to publish them.

MR. O'REILLY: Oh, yeah, sure. So what I'm trying to get across by, uh, coming on with you, uh, today are two things: Number one, I want the story to go away because it's brutalizing my family, and number two, I'm not going to run and hide because I didn't do anything wrong, and I think that the evidence that we've put forth is very strong, very compelling, that the New York Times, um, wants to take me out of the marketplace, this is

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the second time they've attacked me, um, and the article on Sunday regurgitated the first article, that was like 75 percent of it. They had to run it twice in case you didn't get it last April. Um, and they know that I'm at a disadvantage because I can't comment specifically on any case, uh, that has been resolved. That's one of the -- one of the, um --

MR. BECK: Stipulations.

MR. O'REILLY: -- legal -- legal, um, compelling things that when you resolve something, it is always done in a "nobody says anything" and you know who knows that best? The New York Times, because they've settled a number of harassment complaints in a confidential way, yet in their article on Page 1 today, screaming about "Well, we shouldn't have this kind of," um, "provision," they don't mention that, and they don't mention a lot of things, um, so --

MR. BECK: So --

MR. O'REILLY: -- I think -- go ahead.

MR. BECK: So, Bill, I want to ask you a couple of questions. The biggest question that is on everybody's mind is, "Okay, you can settle, but, uh, $32 million coming out of your own pocket, nobody does that."

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MR. O'REILLY: Right.

MR. BECK: So did you --

MR. O'REILLY: What do you want me to say? I'm not --

MR. BECK: So did you --

MR. O'REILLY: The only comment I could make on that issue without getting the thing, um, back into a legal arena would be: The first article that the New York Times wrote quoted figures and added them up and it was wildly wrong, but I can't confirm or deny anything because once I do that, then it goes back into the legal arena, which you don't want, and they know that. So they could say whatever they want to say. They know that, they know we're -- we're hamstrung, my attorneys and investigative team.

MR. BECK: Was --

MR. O'REILLY: We can't.

MR. BECK: Was this settlement by you alone or was Fox involved?

MR. O'REILLY: I can't -- Beck, as I told you off the camera -- I know you have to ask the questions for your audience -- I can't comment on any specific case at all. If I could, I would, but I cannot.

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MR. BECK: Can you, uh, tell me about the relationship that you had with Lis Wiehl? I have --

MR. O'REILLY: No, I -- I cannot -- what we had -- what we have posted is an affidavit from Ms. Wiehl, sworn affidavit. Okay? That's posted on billoreilly.com. That's it. That, we could post, we did, there it is, and I can't speak to anything other than that.

MR. BECK: All right.

MR. O'REILLY: I know it's frustrating.

MR. BECK: No, it's --

MR. O'REILLY: It's frustrating for us too.

MR. BECK: -- really frustrating because --

MR. O'REILLY: It's very frustrating for me -- you can imagine me sitting here -- all right? -- being accused of everything under the sun and the end game is "Let's link O'Reilly with Harvey Weinstein, let's make him that, that's what we want to do." All right? "And so we take him out of the marketplace forever, he never gets," uh, "to give his opinion on issues again, we take him out because

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we hate him," and the New York Times obviously hates me. Um, it's dishonest in the extreme, um, and it's frustrating for me, but unless I want another seven or eight years of constant litigation that puts my children in a kill zone, uh, I have to maintain my discipline.

MR. BECK: Okay, so --

MR. O'REILLY: The only reason -- I can tell you this, Beck: In 20 years plus at the Fox News Channel -- how long did you work there, by the way?

MR. BECK: Um, four years, three years.

MR. O'REILLY: Okay.

MR. BECK: Two years.

MR. O'REILLY: I was there --

MR. BECK: Ten minutes, I don't remember.

MR. O'REILLY: -- 20 years and six months. All right, 20 years and six months. I resolved three things. That's all I resolved in 20 years and six months, I resolved three things, and the only reason I did resolve them was to keep my children safe. So I can tell you that.

MR. BECK: Uh, okay. So let me -- let

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me go one more place. On this --

UNIDENTIFIED VOICE: I should point out, though, that's smaller than the reported number, Bill. Are you saying that the reported number is inaccurate?

MR. O'REILLY: I'm not -- all I'm telling you is the truth. Twenty years, six months, Fox News Channel. I resolved three things. That is the truth.

MR. BECK: Bill, on the, um, on the -- the Wiehl affidavit, um, the New York Times, uh, fails to recognize here that this is a legal document, um, and she is a member of the Bar and that if she signs something that was not true, she should be disbarred. She's not --

MR. O'REILLY: Well, it's worse than that, and I'm not impugning or saying anything, I'm talking in a general sense now.

MR. BECK: She's not saying this --

MR. O'REILLY: If any American --

MR. BECK: -- but the New York Times is --

MR. O'REILLY: Well, wait, wait, wait, wait.

MR. BECK: -- speaking for her.

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MR. O'REILLY: Wait, wait.

MR. BECK: Go ahead.

MR. O'REILLY: If any American citizen signs an affidavit that's notarized -- all right? -- it's under the perjury law, so you can be prosecuted if what you're saying is not true, which is why the affidavit becomes so vitally important, and here's the -- here's the kicker: We gave that to the New York Times. They had that. They did not print it. Then their weasel reporter, the most dishonest man on the face of the earth, tweets out, "Oh, O'Reilly says we didn't mention the affidavit and we did." I didn't say you didn't mention it. I said you didn't print it, and you should have printed it up top because that's the story, but they didn't want that to be out because that wrecked their story, which they already had written, no matter what I said or gave them, and we gave them an unbelievable amount of stuff from day one of my tenure with Fox News. They know but they don't care because this was a hit job to get me out of the marketplace, and then you'll have the left go "Oh, he's paranoid, oh, yeah, yeah." Okay? I could back that up 50 different ways. Media Matters is involved, uh, CNN is involved, I mean, it -- and it's beyond any

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doubt. So again, I will tell everybody, we've got our statement posted on billoreilly.com, we've got the affidavit posted, we've got letters from Gretchen Carlson and Megyn Kelly to me posted, everything is --

MR. BECK: So --

MR. O'REILLY: -- there.

MR. BECK: Okay.

MR. O'REILLY: If you still want to think I'm a bad guy, go ahead.

MR. BECK: This is Megyn Kelly on today's broadcast.

****

(The following audio file was played:)

MS. KELLY: It's a malicious smear claiming that no woman in 20 years ever complained to Human Resources or Legal about him. Maybe that is true; Fox News was not exactly a friendly environment for harassment victims who wanted to report, in my experience. However, O'Reilly's suggestion that no one ever complained about his behavior is false. I know because I complained. It was November of 2016, the day my memoir was released. In it, I included a chapter on Ailes and the sexual harassment scandal at Fox News, something

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the Murdochs knew I was doing and, to their credit, approved. O'Reilly happened to be on CBS News that morning. They asked him about my book and about Ailes, who by this time had been forced out in disgrace. O'Reilly's response:

MR. O'REILLY: I'm not that interested in this.

UNIDENTIFIED VOICE: No?

MR. O'REILLY: No, I mean, it's --

UNIDENTIFIED VOICE: In sexual harassment? You're not interested in sexual harassment?

MR. O'REILLY: I'm not interested in basically litigating something that is finished that makes my network look bad. Okay? I'm not interested in my making my network look bad, at all. That doesn't interest me one bit.

****

MR. BECK: So her complaint, Bill, that she filed, was that you made it tough for people to come out against the network because of statements like that.

MR. O'REILLY: Number one, she didn't file a complaint, not that I know of. It was never brought to our attention that Megyn Kelly did

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anything. All right? So I'd like to see it because I don't believe that's true at all. Number two, what she does not say is that there's an anonymous hotline, and there had been for years at Fox News, where anybody could have called up and said "So and so is doing something to me and you better stop him." All right? That's anonymous. Doesn't mention it. Number three, I'd like you to read the notes that I gave you, uh, Beck, to your audience, from Megyn Kelly to me, the personal notes.

MR. BECK: Do you happen to have them in front of you because my iPad just went down.

VOICE: Convenient.

MR. BECK: Uh, hang on. Uh, so Megyn Kelly, uh, wrote to you, "Dear Bill: What a class act you are," uh, something "to my baby" -- oh, "please come to my baby shower." No, no, no, "what a class act you are" --

UNIDENTIFIED VOICE: No, no, no.

MR. BECK: "Coming to my" --

UNIDENTIFIED VOICE: "Thank you for" -- right -- "coming to my baby shower."

MR. BECK: -- "baby shower."

UNIDENTIFIED VOICE: Right.

MR. BECK: "I was truly touched. I

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know how busy you are, especially that time of the day. It meant a lot to me and Dory. And thank you for the darling body suits and snuggles - it's kind," uh, no, "it's hard to believe," uh, "will soon have a little human being," uh, "in our lives," uh, "to fit into those. You've become a dear friend," uh, "no matter what they say and I am grateful to have you in my life. Megyn Kelly". (quoted as read) Just so --

MR. O'REILLY: Okay, that's letter number one.

MR. BECK: Okay.

MR. O'REILLY: And letter number two.

MR. BECK: Letter number two: "Thank you for the" something "on Dory's book."

MR. O'REILLY: "Mention." "Thank you" --

MR. BECK: Okay.

MR. O'REILLY: "Thank you for the mention on Doug's book." Doug is her husband.

MR. BECK: Doug's book, okay. "I realize you didn't have to do that, especially after mentioning it already. I appreciate how supportive you have been here to me over the years here at Fox News. You're a true friend and mentor." (quoted as

read)

And I want to give one more letter, this is the one -- and these are going to be published up at The Blaze and glennbeck.com. This one is from Gretchen Carlson.

MR. O'REILLY: Right.

MR. BECK: "Bill - Thank you for being the calm in the sea. Thank you so much for supporting me. Thank you for being my friend. It means the world to me. GC". (quoted as read)

MR. O'REILLY: Yeah. So, look, I think that anybody, any fair-minded person, and I really appreciate you reading those to your listeners, I think that they can now start to formulate a picture here because the behavior that you pointed out at the beginning of the, uh, 11:00 hour Eastern time is on the record: 43 years, no complaints, 12 different companies. And then you, Glenn Beck, know me now for what, 10 years, 12 years?

MR. BECK: Yeah, something like that.

MR. O'REILLY: And you've been with me on the road, you know what I am, you know what I do, and now, with the statement we provided on billoreilly.com, with the affidavit, the sworn

affidavit, and with these three, uh, letters, two by Megyn Kelly and one by Gretchen Carlson, a picture should start to emerge, uh, for any fair-minded person, and that's all I can hope for, that the American people will see that this is a attack on an American citizen, me, for political purposes, and you know what? It's done enormous damage to me and to my family and it is a horror and should never happen in our country.

MR. BECK: Bill, what happens if -- what happens if companies settle lawsuits and then the affidavits and the nondisclosures don't mean anything?

MR. O'REILLY: Well, it's over now. Anybody who would be settling anything now is insane because --

MR. BECK: So is that good --

MR. O'REILLY: -- in my case, all the confidentiality stuff was --

MR. BECK: And --

MR. O'REILLY: -- was violated --

MR. BECK: -- you told --

MR. O'REILLY: -- every bit of it.

MR. BECK: You told me about a year ago the biggest mistake you made was settling, so is

this a good thing --

MR. O'REILLY: Oh, absolutely.

MR. BECK: Is this a good thing --

MR. O'REILLY: Absolutely.

MR. BECK: -- or not?

MR. O'REILLY: No, if I had to do it all over again, I never would have done it, but you gotta understand how much pain this brings children and I thought I could spare my children that and I'd do anything for my children, anything to protect them, I'd give up my life for my children...

(Interview continues)

CERTIFICATE

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EXHIBIT J

VIDEOTAPED INTERVIEW
OF
BILL O'REILLY BY MATT LAUER
VIA *TODAY*

TUESDAY, SEPTEMBER 19, 2017

Transcription of the interview of BILL O'REILLY by Matt Lauer, as transcribed by Michele Quick, a Registered Merit Reporter, Certified Realtime Reporter and Certified Court Reporter of the State of New Jersey.

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MR. LAUER: Bill O'Reilly was forced out of his top-rated Fox News show, The O'Reilly Factor, over allegations of sexual harassment. Today also marks the release of Bill's new book, written with Martin Dugard, *Killing England, The Brutal Struggle for American Independence.*

Bill, it's good to see you. Good morning.

MR. O'REILLY: Thanks for having me in.

MR. LAUER: Let me start with what's transpired over the last six months, the first time we're hearing from you.

What was the exact reason you were given or your representatives were given by people at Fox News for your firing?

MR. O'REILLY: There was no reason. Um, they had a contractual, uh, clause that they could pay me a certain amount of money and not put me on the air and they exercised that -- that clause.

MR. LAUER: But why did they exercise that, what was the reason they said they were exercising that?

MR. O'REILLY: You know, there was a

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sponsored boycott, uh, engineered by Media Matters, uh, the radical left group, and the sponsored boycott, uh, unsettled some people at Fox News so --

MR. LAUER: You were accused of sexual harassment.

MR. O'REILLY: Um-hum.

MR. LAUER: You said at the time you did absolutely nothing wrong.

MR. O'REILLY: Correct.

MR. LAUER: Do you stand by that?

MR. O'REILLY: I do.

MR. LAUER: And so did you provide Fox News any evidence, any information that you think could have changed their mind as to what you were guilty or not guilty of?

MR. O'REILLY: My legal team was very aggressive in putting forth our point of view and that's all I'm going to say about it.

MR. LAUER: You -- I want to put this in perspective timing-wise. You were fired about ten months after Roger Ailes was let go --

MR. O'REILLY: Correct.

MR. LAUER: -- by the network over allegations of sexual harassment, so the network understood the subject matter. You were probably

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the last guy in the world that they wanted to fire because you were the guy that the ratings and the revenues were built on, you carried that network on your shoulders for a lot of years, so doesn't it seem safe to assume that the people at Fox News were given a piece of information or given some evidence that simply made it impossible for you to stay on at Fox News?

MR. O'REILLY: I -- that's a false assumption. There were a lot of other business things in play at that time and still today, um, that 21st Century was involved with and it was a business decision that they made, but there isn't any, um, smoking gun or --

MR. LAUER: But you don't let your --

MR. O'REILLY: -- anything like that.

MR. LAUER: -- number-one guy go --

MR. O'REILLY: Sure, you do.

MR. LAUER: -- unless you have information that you think makes him --

MR. O'REILLY: That's not true. There are billions of dollars at stake in business, uh, deals and, uh, they made a business decision that they could, you know, possibly prosper more without me. It was as simple as that, it was a business

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decision.

MR. LAUER: Did you ever send a lewd text or e-mail to another employee at Fox News?

MR. O'REILLY: No.

MR. LAUER: Did you ever have any Human Resources cases brought against you?

MR. O'REILLY: Not in 42 years.

MR. LAUER: The New York Times --

MR. O'REILLY: Wait, wait. In 42 years -- all right? -- I've been in this business, I've worked for 12 companies; not one time did I have any interaction with HR or any complaints filed against me.

MR. LAUER: The New York Times reported that up to five women had come forward over the years and complained about sexual harassment at your hands and that Fox News actually made deals with those women, financial settlements, amounting to about $13 million, for their silence. Is that accurate?

MR. O'REILLY: I don't know, because I'm not privy to what Fox News did. After Roger Ailes went down, there was a flood of lawsuits, a flood, with dozens of people named, and the company did what the company did.

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MR. LAUER: But you've read --
MR. O'REILLY: Wait, wait, wait.
MR. LAUER: -- the reports --
MR. O'REILLY: Wait. Every company in this country, including this one, Comcast, has these lawsuits, every one. Now, some of them are valid and some of them are not. They settle them for a number of reasons. Now, as an employee, I don't really have any say in that matter.
MR. LAUER: But were you aware of those five women who --
MR. O'REILLY: I was aware, sure.
MR. LAUER: And so --
MR. O'REILLY: We were aware.
MR. LAUER: -- why didn't you sue those women if you say --
MR. O'REILLY: Because you --
MR. LAUER: -- you did absolutely nothing wrong?
MR. O'REILLY: -- can't win those lawsuits. If you're a public figure, you cannot win them. Sarah Palin is the latest example. Um, and I could do that, but the collateral damage of these lawsuits, the press frenzy, every allegation is a conviction... Every allegation in this area is a

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conviction. They don't look for the truth.
MR. LAUER: But think about those five women and what they did. They came forward and filed complaints against the biggest star at the network they worked at. Think of how intimidating that must have been, how nerve-racking that must have been. Doesn't that tell you how strongly they felt about the way they were treated by you?
MR. O'REILLY: Well, it's not just me. Those lawsuits involve many other people, not just me. So I don't know -- I'm not going to speculate about intent or why people did what they did, but you don't have the story, Lauer, correct. The lawsuits involved many people. Many people.
MR. LAUER: But you were also named.
MR. O'REILLY: I was named in a few of them. A few of them.
MR. LAUER: Let me put a period on it this way, Bill, by asking you, over the last six months since your firing, have you done some soul searching, have you -- have you done some self-reflection and have you looked at the way you treated women that you think now or think about differently now than you did at the time?
MR. O'REILLY: My conscience is clear.

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What I have done is organized a legal team to get the truth to the American people, so if you go to, um, newsmax.com or billoreilly.com, you will see an article about one of the accusers of me -- okay? -- who was arrested for filing a false police report. You will see that article and I want people --
MR. LAUER: And that happened --
MR. O'REILLY: I want people to read it and make up their own minds.
MR. LAUER: And that happened back in 2015 and I just want to mention that two things can be mutually exclusive. She could have filed a false report in --
MR. O'REILLY: But you don't know, Lauer.
MR. LAUER: And I don't --
MR. O'REILLY: You don't know.
MR. LAUER: -- but she could have filed a false report in 2015 and still be telling the truth about you.
MR. O'REILLY: Look, anything's possible. All right? But it goes to credibility, doesn't it? All right? If you look at the -- in totality, this was a hit job, a political and financial hit job --

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MR. LAUER: Is this a --
MR. O'REILLY: -- engineered by --
MR. LAUER: -- vast left-wing conspiracy?
MR. O'REILLY: No "vast" and don't be sarcastic.
MR. LAUER: Well, I mean, but --
MR. O'REILLY: Don't be sarcastic.
MR. LAUER: -- I was the one that she -- that Hillary Clinton said that to --
MR. O'REILLY: All right.
MR. LAUER: -- here 20 years ago.
MR. O'REILLY: We're going to be able to prove what we say. There are more things to come. All right? This was Media Matters, the Bonner Group, Color of Change organizing sponsored boycotts to bring down Fox News and me.
MR. LAUER: Were there any self-inflicted wounds here, Bill?
MR. O'REILLY: You know, nobody's a perfect person, but I can go to sleep at night very well knowing that I never mistreated anyone on my watch in 42 years.
MR. LAUER: We spoke earlier and I said I would ask you these questions and I would

also ask you about your book and I'm going to uphold my end of the bargain.

Killing England --

MR. O'REILLY: Yes.

MR. LAUER: -- about the American Revolution, about the heroes and the villains of that fight for freedom, you think it's particularly relevant now. Why?

MR. O'REILLY: You have in Dallas the public school system now debating whether to change the names of schools after Washington, Jefferson and Madison and Franklin, Benjamin Franklin. This is madness and folks need to know about these icons, who they were, in order to stop this craziness. *Killing England* is seen through the eyes of George Washington, Thomas Jefferson, Benjamin Franklin. All right? What they went through, who they were, and it's unvarnished, it's slaves, it's everything. So people need to know who they were to stop this crazy --

MR. LAUER: So --

MR. O'REILLY: Stuff.

MR. LAUER: -- when you talk about "this crazy stuff," do you think we are living through -- under a reexamination of history now or

is history under assault, in your opinion?

MR. O'REILLY: It's under assault. It's absolutely -- the far left and PC forces want to wipe out our legacy. You know why? Do you know?

MR. LAUER: No.

MR. O'REILLY: Because they believe it's based on white supremacy. It's no accident we're hearing that word -- those words, "white supremacy." They want to redo everything, the constitution, how we make laws, everything, because they believe, "they" the far left and the PC forces, we are a bad country, the USA. I want people to read *Killing England* so they know and can make up their own mind. Make up your own mind, but know the facts about these people, and most don't. They don't know who George Washington was, you don't know what he did. All right? You think you do but you don't, and that's why we wrote *Killing England*.

MR. LAUER: And I want to tell people the book is out now, it's in bookstores and online. Bill O'Reilly. Thanks very much.

MR. O'REILLY: Thanks for having me in.

MR. LAUER: It's good to see you.

(Interview is concluded.)

CERTIFICATE

I, MICHELE QUICK, a Certified Court Reporter, Registered Merit Reporter, Certified Realtime Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S. 41:2-1, do hereby state that the foregoing is a true and accurate verbatim transcript of my stenographic notes of the within proceedings, to the best of my ability.

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EXHIBIT K

AUDIO-RECORDED INTERVIEW
OF BILL O'REILLY
BY SEAN HANNITY
VIA *SEAN HANNITY SHOW* (RADIO)

MONDAY, SEPTEMBER 18, 2017

Transcription of portion of interview of BILL O'REILLY by Sean Hannity, as transcribed by Michele Quick, a Registered Merit Reporter, Certified Realtime Reporter and Certified Court Reporter of the State of New Jersey.

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MR. HANNITY: Um, my fellow host over at the Fox News Channel, Bill O'Reilly, was the latest victim of this and he joins us now to talk about this. He also has a brand-new book out he's launching today, it's called *Killing England, The Brutal Struggle for American Independence*. The cover is awesome.

Bill, how are you?

MR. O'REILLY: Good, thanks for having me in, Sean.

MR. HANNITY: Am I overstating this, is that hyperbole on my part?

MR. O'REILLY: No, um, I think anybody who really wants to get an independent view of this, aside from you and me, should read Cheryl Atkinson's book, *The Smear*. Um, that book is so well researched and documented and it will take the reader through this machine that the far left has developed to harm -- and that's the word, "harm" -- anyone with whom they disagree. So Cheryl nailed it, um, and I'm a victim of it and you, um, to your credit, uh, when they got through with me and they turned their guns on you --

MR. HANNITY: By the way, two days after you were fired.

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MR. O'REILLY: Right.

MR. HANNITY: Two days after.

MR. O'REILLY: You brought it right to the folks. You're a lot smarter than I am, Hannity. All right?

MR. HANNITY: Well --

MR. O'REILLY: So you've got that on tape now. I should have done exactly the same thing as you --

MR. HANNITY: Wait a minute, wait a minute. Get that in a promo real right now, we want to put that on a loop, Bill O'Reilly saying I'm smarter than him. Um --

MR. O'REILLY: Well, you certainly -- certainly handled it better than I did because you brought it to the folks --

MR. HANNITY: -- well --

MR. O'REILLY: -- and the folks knew it was BS and now what I'm trying to do is expose the whole thing, uh, along with you, so that Americans know the danger.

MR. HANNITY: You know, I read this article, it was in Newsmax yesterday, it's one of the reasons I wanted to have you on. I'm also reading your new book and I'm really enjoying it and

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I think it's maybe one of your best *Killing* books so far and I know they've done very well and they often get turned into movies, but, um -- so this article comes out in Newsmax about a 2015 arrest by the Detroit police, about one of these accusers that was in part responsible for the boycott that ultimately led to your firing at Fox and what it found out is pretty shocking because it's pretty detailed. Why don't you tell everybody what it is.

MR. O'REILLY: All right, well, uh, the article's posted, as you mentioned, on newsmax.com and billoreilly.com and, uh, one of these women who smeared me and was given, um, a free pass by *The View* and quoted in every newspaper, um, totally fabricated, never -- I never saw the woman, never had a conversation with the woman, no idea who she is. Well, now we learn that she was arrested for filing a false police report in Detroit, um, we have the police report in the article, um, it's shocking. It's shocking. And not only that, but the phrases that she said I said to her -- again, a total fabrication -- she used in tweets years ago, the exact same phrases, so it's a stunning article, but you're not going to get the mainstream media to give it a lot of play even though they ran with what

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she smeared me, no problem, didn't vet her, nobody looked into her background, and here we go, this is just a first of many that we're going to have for, uh, the American people.

MR. HANNITY: You have said that you have launched a significant investigation, investing a lot of resources, into clearing your name. Where are you with that?

MR. O'REILLY: Well, as I said, this is the first drop, uh, that you're going to see. We're going to be very precise and there's not going to be any "he said, she said," not going to be any of that. It's going to be facts, cold-stone facts, and what we're going to uncover, because we're already pretty well down this road, is shocking. That's the only word I can use, "shocking" --

MR. HANNITY: And they'll be --

MR. O'REILLY: -- that this could happen in our republic, that this kind of defamation -- and it's bought and paid for, as you pointed out, millions of dollars in play. It's shocking.

MR. HANNITY: I want to clear something up, and this is a fact and it was widely reported, that when you were at the Fox News Channel

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and we were one of the -- both hired at the same time, we went on in October of '96, and what a lot of people didn't know is, A, we rarely saw each other and we kind of were a little bit competitors and at each other's throats, but I will say this, that since you left the channel, you and I have started to have conversations and we realized, I think, that in many ways, it was probably a mistake on both our parts to, you know, think that you were isolated on an island and I'm isolated on an island, because I think what these groups very effectively do is they target and isolate in very Alinsky-like fashion and so they'll go after you and they'll go after Dr. Laura and they'll go after Glenn Beck and they'll go after Don Imus and they'll go after Rush Limbaugh, and then two days after you were fired, they went after me, and it was a woman that had stalked me for 14 years, smeared me, lied about me for all those years, and you can't do anything about it, and you can't even sue because the person has no money, nothing. There's nothing to win. And -- and then everybody in the media picks up what a stalker says and they run with it and then you're -- you're playing defense trying to defend your good name.

MR. O'REILLY: Well, you can't win

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because the media wants you silenced and they wanted me silenced. That's the outcome that they want. So CNN, MSNBC, the newspapers, all of that, they don't care whether it's true or not, nobody's searching for the truth, nobody, so whatever allegation is put out there becomes a fact.

MR. HANNITY: That's right.

MR. O'REILLY: And -- so you're left defending yourself against phantoms. As I said, this woman who smeared me, I never spoke to this woman in my life. I don't even know who she is.

MR. HANNITY: I heard the case, and I didn't know this at the time but I -- I found out subsequently that this woman that was in Los Angeles, that, yeah, you did have a drink with her, big deal, and that there was actually --

MR. O'REILLY: Oh, that was ridiculous.

MR. HANNITY: There was a time --

MR. O'REILLY: It was preposterous.

MR. HANNITY: There was a timestamp on the whole thing.

MR. O'REILLY: That was so preposterous and this was the only one that they could come up with, the New York Times could come up with -- all

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right? -- and the woman says that, um, "Oh, uh, he did something untoward, O'Reilly did something..." and then after that alleged, which never happened -- okay? -- she was on my show for 15 weeks. All right? And then we analyzed the ratings, they weren't that great, so we didn't hire her as a contributor. Well, that was it, and then she said "Can you help me with my book?" to me in an e-mail to my assistant. I said "Sure" because I'll help people out. I got her on *The View*, a national spot. You should -- we have all the e-mails, all the documentation that matter.

MR. HANNITY: By the way, if you can get --

MR. O'REILLY: It doesn't matter.

MR. HANNITY: If you can get --

MR. O'REILLY: The accusation is what the mainstream media wants.

MR. HANNITY: If you can get me on *The View*, I think I'll pass, by the way, thank you very much. I don't think anybody wants to go on that show anymore. But this is really -- I think we are at a crossroads and here's the serious aspect of this. I have never been a believer in boycotts, I have never been out there calling for the firings.

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What I -- for example, what happened at the Emmys last night was despicable, it was disgusting, it was disgraceful, and they paid for it with low ratings, but I'm not that person. It seems like conservatives now have become the more tolerant people in this country and the ones -- I call it "liberal fascism." They want to shut down, silence any voice they don't agree with and they want a monopoly of all media and I think one of the reasons Fox was so successful all these years is we had many different points -- look, we don't agree on everything but that -- but look at all the other voices we have on Fox that disagree with us.

MR. O'REILLY: Look, they lost the media war, "they" being the far left, they lost it, then they lost the political war, because Trump was elected President, so now they have no choice, they can't compete and win hearts and minds, they can't, so they have to destroy and that's what they're doing and it is -- you know, I have to tell your audience, and this is -- why don't you take a drink of water, Hannity, you don't say anything, all right? This is just for your audience. Hannity is the only one, really, taking these people on. Now, other commentators mention it but everybody's

afraid. Everybody's afraid that these people are going to dig up stuff, they're going to fabricate stuff, they're going to attack, attack, attack, and nobody wants to live their life that way, so therefore, these people have been allowed to amass a lot of power; we're talking Media Matters, Color of Change, the Bonner Group, George Soros's operation. They've been -- because nobody will expose them, but Hannity's done it, he started it, so everybody should know that whether you agree with Sean or not. He's the guy that's putting himself out there to stop this and I'm --

MR. HANNITY: Bill, I'm going to tell you something. I have a regret, I really do. I regret I didn't start it earlier, and I think they've done a very -- look, we're all natural competitors, so... We're in the same industry. You were in radio, you were in TV, I'm on radio and then TV, and I guess there's just this natural competition, so there's kind of a schism and they kind of use that schism to sort of pick off one person at a time, and ultimately, you're right in this sense, their agenda is what they could never get done at the ballot box electorally, what they could --

MR. O'REILLY: That's right.

MR. HANNITY: -- never get done legislatively, um --

MR. O'REILLY: Or on television.

MR. HANNITY: Or on television.

MR. O'REILLY: We crushed CNN and MSNBC. Crushed them.

MR. HANNITY: Well, you want to come back?

MR. O'REILLY: All right?

MR. HANNITY: I think you should come back.

MR. O'REILLY: I mean, I'm -- I'm at the beach every day having fun. Do you want -- you want to drag me back into the swamp, Hannity, is that what you're telling me to do?

MR. HANNITY: I think you want back in the swamp but I think you'd love it back in the swamp. Look, I know your fans would like you back on, too, and there's not a day that goes by that people don't ask me, you know, "How's O'Reilly doing? When is he coming back?" Would you -- would you consider, at some date, coming back to Fox?

MR. O'REILLY: I don't know, I mean, I have to get this legal stuff done, I have to get

this investigation done, it's just where I'm putting my energies, and we have billoreilly.com. We do a podcast every day, which is really --

MR. HANNITY: So you're going to make me pay to watch you? Why do I have to pay to watch you?

C E R T I F I C A T E

I, MICHELE QUICK, a Certified Court Reporter, Registered Merit Reporter, Certified Realtime Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S. 41:2-1, do hereby state that the foregoing is a true and accurate verbatim transcript of my stenographic notes of the within proceedings, to the best of my ability.

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EXHIBIT L

Print Close

Fox News drops Bill O'Reilly in wake of harassment allegations

By Howard Kurtz

Published April 19, 2017

Fox News

Fox News is cutting ties with Bill O'Reilly, the biggest star in its 20-year history, after mounting allegations of sexual harassment and inappropriate behavior prompted the network to end his program.

"After a thorough and careful review of the allegations," parent company 21st Century Fox said in a statement, "the company and Bill O'Reilly have agreed that Bill O'Reilly will not be returning to the Fox News Channel."

Wednesday's decision seemed unimaginable a few short weeks ago, given O'Reilly's long reign as the top-rated host in cable news.

" ... the company and Bill O'Reilly have agreed that Bill O'Reilly will not be returning to the Fox News Channel."

- Statement from 21st Century Fox

But the climate shifted dramatically after The New York Times reported on April 1 that O'Reilly or Fox had paid $13 million to settle five cases against him alleging sexual or other harassment. More than 50 advertisers withdrew from his prime-time show, and 21st Century Fox asked a law firm to investigate a complaint from a woman who said O'Reilly dropped efforts to make her a contributor in 2013 after she turned down his invitation to visit his hotel room.

O'Reilly said in a statement Wednesday: "It is tremendously disheartening that we part ways due to completely unfounded claims. But that is the unfortunate reality many of us in the public eye must live with today. I will always look back on my time at Fox with great pride in the unprecedented success we achieved and with my deepest gratitude to all my dedicated viewers. I wish only the best for Fox News Channel."

O'Reilly, 67, had not previously commented on his status since leaving on vacation last week—he met Pope Francis Wednesday in a VIP line at the Vatican—but his lawyer issued a blistering statement Tuesday accusing his liberal opponents of a "smear campaign."

The statement said O'Reilly "has been subjected to a brutal campaign of character assassination that is unprecedented in post-McCarthyist America."

Starting Monday, Fox will air Tucker Carlson's show an hour earlier, in O'Reilly's 8 p.m. ET slot, and move the popular ensemble show "The Five" from 5 to 9 p.m. On May 1, "Five" member Eric Bolling will debut a one-hour program at 5 p.m., and Martha MacCallum will make her "First 100 Days" show permanent at 7 p.m.

O'Reilly's departure comes nine months after Fox News founder Roger Ailes was forced out as chairman following a sexual harassment lawsuit by former host Gretchen Carlson and allegations by at least a half-dozen women, all of which he denied. One of them was Megyn Kelly, who also clashed with O'Reilly and who decided to leave Fox for NBC last December.

The net result is not just a transformation of Fox's prime-time lineup, which has trounced the cable competition, but an effort by Rupert Murdoch and his sons, James and Lachlan, to change the company's culture and make clear that harassment is unacceptable. That became increasingly difficult, and spawned resentment among some female staffers, as O'Reilly's problems became a dominant news story.

Fox had recently signed O'Reilly to a new multi-year contract, even as executives knew the Times story was coming.

The "O'Reilly Factor" has spawned a cottage industry, with the host, who was part of the channel's original lineup in 1996, producing a slew of best-selling books and finding himself in demand for lucrative speaking engagements. It has been a cash cow for Fox News Channel, generating about $178 million in ad revenue in 2015, according to an estimate by Kantar Media. And his ratings remained stratospheric by cable standards, averaging just under 4 million viewers in the first quarter of this year and rising even after the allegations published by the Times.

O'Reilly has survived controversial episodes in the past. One of the settlements cited by the Times drew extensive publicity in 2004, when one of his former producers, Andrea Mackris, accused him of sexually explicit phone calls. O'Reilly countersued before both sides settled the case.

Two years ago, O'Reilly came under attack for having claimed to cover the 1982 Falklands War although he had not actually been on the Falkland Islands. He blamed liberal critics for using semantics to falsely accuse him.

Most of his positions were conservative, and he maintained a cordial relationship with President Trump after having been consistently tough on President Obama. But O'Reilly styled himself an independent, sometimes took moderate stances and supported Obama's "My Brother's Keeper" initiative aimed at helping black youth. And there was a strong populist streak to his commentary, whether he was assailing rap music, media bias or what he branded the "War on Christmas."

Even most of his critics acknowledged that O'Reilly, a former correspondent for CBS and ABC and onetime host of "Inside Edition," is an extraordinary broadcaster whose blustery, sometimes confrontational style kept putting people in the seats.

Howard Kurtz is a Fox News analyst and the host of "MediaBuzz" (Sundays 11 a.m.). He is the author of five books and is based in Washington. Follow him at @HowardKurtz. Click here for more information on Howard Kurtz.