Rachel C. Strickland
Aaron E. Nathan
James H. Burbage
M. Annie Houghton-Larsen
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 728-8000
rstrickland@willkie.com
anathan@willkie.com
jburbage@willkie.com
mhoughton-larsen@willkie.com

Michael J. Gottlieb
Meryl Governski (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
mgottlieb@willkie.com
mgovernski@willkie.com

John Langford
Rachel Goodman
UNITED TO PROTECT DEMOCRACY
82 Nassau Street, #601
New York, NY 10038
Telephone: (202) 579-4582
john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org

Von A. DuBose (*pro hac vice* forthcoming)
DUBOSE MILLER LLC
75 14th Street NE
Suite 2110
Atlanta, GA 30309
Telephone: (404) 720-8111
dubose@dubosemiller.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: RUDOLPH W. GIULIANI a/k/a RUDOLPH WILLIAM GIULIANI, Debtor.	Chapter 11 Case No. 23-12055 (SHL)
RUBY FREEMAN and WANDREA' ArSHAYE MOSS, Plaintiffs, v. RUDOLPH W. GIULIANI a/k/a RUDOLPH WILLIAM GIULIANI, Defendant.	Adv. Pro. No. _____ **COMPLAINT FOR INJUNCTIVE RELIEF**

INTRODUCTION

1. This is an action for injunctive relief to permanently bar Defendant Rudolph W. Giuliani ("Defendant") from continuing his malicious campaign against Plaintiffs Ruby Freeman and Wandrea' ArShaye "Shaye" Moss ("Plaintiffs"). Undeterred by facts, logic, decency, professional discipline, court orders in multiple jurisdictions, a criminal indictment, a multi-million dollar jury verdict, or declaring bankruptcy as a result, Mr. Giuliani has entered year four of intentionally defaming Ms. Freeman and Ms. Moss—repeating the very same lies that Plaintiffs engaged in fraud during their service as election workers during the 2020 presidential election.

2. Enough is enough. Contrary to his delusions of grandeur, the law does apply to Mr. Giuliani, and it is beyond time to make him follow it. As the Supreme Court of the United States held more than fifty years ago, injunctive relief is the appropriate remedy for those, like Mr. Giuliani, who continue to publish speech already held to be unprotected. *See, e.g.*, *Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 390 (1973); *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 441 (1957). This Court should promptly impose that remedy.

3. Mr. Giuliani has already been found liable for defamation and intentional infliction of emotional distress for disseminating these same lies in *Freeman et al. v. Giuliani*, No. 21-cv-3354 (D.D.C.) (the "Freeman Litigation"). After the United States District Court for the District of Columbia (the "D.C. District Court") entered default judgment on liability against Mr. Giuliani—based in part on his own attempts to stipulate to liability for nearly identical statements as are at issue here—the case proceeded to a jury trial on damages. At trial, Mr. Giuliani heard Ms. Freeman and Ms. Moss testify about the devastating consequences of his campaign of lies. On December 15, 2023, a jury entered a unanimous verdict awarding Plaintiffs over $148 million in combined compensatory and punitive damages, and on December 18, 2023, the D.C. District Court entered final judgment on that jury award, while declaring that Mr. Giuliani engaged in defamation

per se, intentional infliction of emotional distress, and a civil conspiracy to commit the same. The Court specifically declared that Mr. Giuliani's claims about Plaintiffs are false, that Mr. Giuliani acted with actual malice, and his conduct was intentional, malicious, wanton, and willful.

4. Mr. Giuliani's campaign of tortious conduct continued during the Freeman Litigation, including declaring to reporters that his statements were all "true" after leaving the courthouse after the first day of trial. Plaintiffs brought a second action for injunctive relief in the D.C. District Court, seeking to put an end to Mr. Giuliani's continued defamatory lies. *See Freeman v. Giuliani*, No. 23-cv-3754 (D.D.C. Dec. 18, 2023). Three days later, Mr. Giuliani filed a bankruptcy petition in this Court, automatically staying Plaintiffs' action for injunctive relief.

5. Since being found liable for defamation in the Freeman Litigation, and then filing his chapter 11 petition in this Court, Mr. Giuliani has acted as if he is operating in a law-free zone in which there are no consequences for anything he does. He has continued to spread the very same lies that he previously conceded made him liable for defamation in the Freeman Litigation. For example, Mr. Giuliani stipulated to his own liability, and was subsequently held liable, for claiming Ms. Freeman and Ms. Moss "deliberately threw people out and counted the ballots in private[;]" and "counted [ballots] more than one time—three, four, five, six, seven times, eight times."[1] Since filing his chapter 11 petition, Mr. Giuliani has claimed that Ms. Freeman and Ms. Moss "excluded the public . . . threw them out, [and] cased the joint like I said[;]"[2] and were "counting the ballots four times. One two, one two, four times four times four times."[3]

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[1] *Freeman v. Giuliani*, No. 21-cv-3354 (D.D.C. May 10, 2022), ECF. 22, Ex. A at ¶¶ 66, 90.

[2] Rudy W. Giuliani (@RudyGiuliani), *America's Mayor Live (397): The Stunning Lack of Leadership at These So-Called Elite Universities* (April 30, 2024, 8:00 PM), https://twitter.com/RudyGiuliani/status/1785459381741801931 at 53:03–53:10.

[3] Rudy W. Giuliani (@RudyGiuliani), *America's Mayor Live (384): The Fall of New York City & How the Giuliani Playbook Can Spur a Revival*, (April 11, 2024, 8:00 PM), https://twitter.com/i/broadcasts/1lPKqbpkgMYGb at

6. Mr. Giuliani made these statements knowing the impact his past defamation had on Ms. Freeman and Ms. Moss and knowing the harm that ongoing defamation would cause. He also made these statements after being warned by this Court not to do so.[4] Mr. Giuliani cannot be permitted to use the bankruptcy system as a shield while continuing his baseless attacks on Plaintiffs. Left unchecked, Mr. Giuliani's statements will dramatically increase post-petition claims against his estate and drain it of any distributable value for his creditors. Plaintiffs accordingly bring this adversary proceeding for injunctive relief to put a stop to Mr. Giuliani's continuing, knowing defamation, once and for all.

PARTIES

7. Plaintiffs Ruby Freeman and Wandrea' "Shaye" Moss were plaintiffs in the Freeman Litigation, and hold a final money judgment in the amount of $146,206,113.00, plus post-judgment interest, entered in that litigation. Plaintiffs are creditors in the Defendant's Chapter 11 bankruptcy case, *In re Rudolph W. Giuliani*, No. 23-12055 (SHL).

8. Defendant Rudolph W. Giuliani is the debtor in Case No. 23-12055 (SHL) and was a defendant in the Freeman Litigation.

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334. Venue is proper in this District under 28 U.S.C. § 1409(a) because this adversary proceeding relates to *In re Rudolph W. Giuliani*, No. 23-12055-SHL, a Chapter 11 case pending in this District. Plaintiffs consent to entry of final orders or judgment by this Court.

1:08:27–1:08:32.

[4] *See* Jan. 19, 2024 Hr'g Tr. 70:25–72:7, *In re Rudolph W. Giuliani*, No. 23-12055 (SHL) (Bankr. S.D.N.Y.).

BACKGROUND

10. The Freeman Complaint filed in the Freeman Litigation and the voluminous evidentiary record presented at trial set forth in detail the facts underlying Plaintiffs' judgment against Mr. Giuliani. As relevant here, all facts alleged in the Freeman Complaint are deemed admitted by operation of the default judgment entered against Mr. Giuliani in that case. A copy of the operative complaint in that action is attached to this Complaint as Exhibit A and incorporated herein by reference. Plaintiffs summarize the relevant facts here to provide background for the claims at issue in this adversary proceeding.

11. On December 3, 2020, Mr. Giuliani began spreading the lie that non-partisan election workers at State Farm Arena in Fulton County, Georgia—including Ms. Freeman and Ms. Moss—"stole" the Presidential Election in Georgia from former President Trump. In the days and weeks that followed, Mr. Giuliani accused Ms. Freeman and Ms. Moss of excluding election observers under false pretenses, fabricating a water leak to exclude observers, hiding illegal ballots in suitcases, counting illegal ballots multiple times, and passing a USB drive to alter the vote tally.[5] He spread these lies on multiple platforms and encouraged others to do the same.[6] Strangers who believed Mr. Giuliani's lies contacted Ms. Freeman and Ms. Moss, harassing the women online, by phone, and, eventually, in person.[7]

12. After enduring the effects of Mr. Giuliani's lies for over a year, Ms. Freeman and Ms. Moss initiated the Freeman Litigation on December 23, 2021.

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[5] *See* Ex. A ¶¶ 4, 38, 59, 61, 66, 69, 91, 99, 100, 107, 134, 166.

[6] *Id.* ¶¶ 5, 12, 18.

[7] *Id.* ¶¶ 139–162.

13. On August 31, 2023, the D.C. District Court found that Mr. Giuliani had "intentionally and willfully ignored" his obligation to preserve evidence, and engaged in "willful shirking of his discovery obligations." As a consequence of that "willful discovery misconduct," the D.C. District Court entered a default judgment as to liability against Mr. Giuliani as a sanction under Federal Rule of Civil Procedure 37. That default judgment had the effect of deeming as true the factual allegations in the operative complaint in the Freeman Litigation. A copy of the order granting a default judgment is attached to this Complaint as Exhibit B and incorporated herein by reference.

14. A jury trial was held to quantify the damages owed to Plaintiffs as a result of Mr. Giuliani's liability on Plaintiffs' claims. On December 15, 2023, a federal jury returned a unanimous verdict awarding Ms. Freeman and Ms. Moss approximately $148 million in compensatory and punitive damages. A copy of the Verdict Form is attached to this Complaint as Exhibit B and incorporated herein by reference.

15. Following the verdict, Plaintiffs' counsel asked Mr. Giuliani to enter into an agreement to stop publishing these and any similar false claims about Plaintiffs. Mr. Giuliani refused.

16. On December 18, 2023, Plaintiffs and Mr. Giuliani entered a Joint Stipulation Regarding Entry of Final Judgment, which requested that the D.C. District Court enter Declaratory Judgment as to multiple facts, including that:

> (1) that the Actionable Statements set forth in the Amended Complaint are false; (2) that those statements are defamatory and defamatory per se; (3) that those statements were of and concerning Plaintiffs; (4) that Defendant made those statements with actual malice; (5) that Defendant published those statements to third parties without privilege; and (6) that those statements caused Plaintiff harm.[8]

[8] Joint Stipulation Regarding Entry of Final Judgment, *Freeman v. Giuliani*, No. 21-cv-3354 (D.D.C. December 18,

A copy of the Joint Stipulation is attached as Exhibit D and incorporated herein by reference.

17. The D.C. District Court entered final judgment (the "Final Judgment") the same day. A copy of the Final Judgment is attached as Exhibit E and incorporated herein by reference. That Final Judgment included the precise declaratory relief to which Mr. Giuliani had stipulated, including a declaration that the statements challenged in Plaintiffs' operative complaint

> [(1)] are false; (2) that those statements are defamatory and defamatory *per se*; (3) that those statements were of and concerning plaintiffs; (4) that defendant made those statements with actual malice; (5) that defendant published those statements to third parties without privilege; and (6) that those statements caused plaintiffs harm.[9]

Accordingly, the Final Judgment's express declaratory relief conclusively establishes all the elements of defamation *per se* with respect to Mr. Giuliani's statements, and those determinations extend to Mr. Giuliani's substantially identical post-petition statements alleged in this Complaint.

18. The same day, because of Mr. Giuliani's refusal to agree to stop spreading his lies about Plaintiffs, Plaintiffs filed suit for injunctive relief in the D.C. District Court. A copy of the operative complaint in that action is attached to this Complaint as Exhibit F and incorporated herein by reference. That lawsuit was automatically stayed as a result of Mr. Giuliani initiating this bankruptcy proceeding on December 21, 2023, and remains stayed now.

19. Since filing his bankruptcy petition, Mr. Giuliani has taken advantage of the automatic stay of Plaintiffs claim for injunctive relief to continue to spread the very same lies for which he has already been held liable in the Freeman Litigation. For example:

2023), ECF No. 138 (the "Joint Stipulation") (internal citations omitted); Ex. D at 2.

[9] *See* Final Judgment, *Freeman v. Giuliani*, No. 21-cv-3354 (D.D.C. December 18, 2023), ECF No. 142 (internal citations omitted); Ex. E at 2.

20. On January 5, 2024, Mr. Giuliani appeared on his daily Twitter live cast, *America's Mayor Live*, and said the following:

> **[t]he case was in Georgia, the two women, I could play the tapes for you right now of one of them counting ballots four times.** I wasn't allowed to play it at the trial, she'll probably put me in jail if I play them. God forbid you should find out the truth. Because we don't live in a free country any longer. We're free as long as we do what the Biden regime requires us to do, which is to submit to the lie that the election of 2020 was legitimate. Submit to the lie that these women didn't do multiple counts of the ballot. Submit to the lie that Atlanta, Georgia didn't engage in election fraud, it would almost be inconsistent in who they are if they didn't engage in election fraud.[10]

21. On January 8, 2024, Mr. Giuliani appeared on his second Twitter live cast, *America's Mayor Confidential*, and said:

> I was not allowed to put it in a defense. I was not allowed to take the videos of **the women of the woman, one of the women, I had a clear video of her quadruple and triple counting the same ballots.** You can look at it 100 times you can analyze it 50 ways to Sunday **that's exactly what she was doing.**[11]

22. On March 25, 2024, Mr. Giuliani appeared on *America's Mayor Live* and said:

> I mean, I pointed to the evidence that I had, **and the evidence that I had, including those women who were, you know, counting up the votes a couple of times**…about those women are – it's my opinion. It's my opinion. You can go look on tape for yourself. You decide, you decide: were they counting the votes more than one time **or weren't they, you can see it!**[12]

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[10] Rudy W. Giuliani (@RudyGiuliani), *America's Mayor Live E315 Joe Biden Says My Name in Re-Election Campaign Announcement - My Response*, (Jan. 5, 2024, 8:00 PM), https://x.com/RudyGiuliani/status/1743437296396013678?s=20 at 15:01–16:04.

[11] Rudy W. Giuliani (@RudyGiuliani), *Setting the Record w/ Cara Castronuova (X9)*, America's Mayor Confidential, (Jan. 8, 2024, 9:00 PM), https://twitter.com/RudyGiuliani/status/1744461285696151749 at 18:57–19:24.

[12] Rudy W. Giuliani (@RudyGiuliani), *America's Mayor Live (E371): Appeals Court Rules Against Judge Engoron in Phony Fraud Case YET AGAIN*, (March 25, 2024, 8:00 PM), https://twitter.com/i/broadcasts/1eaKbgYdEeZGX at 1:11:04–1:11:58.

23. On April 11, 2024, Mr. Giuliani spoke at an event in Tulsa, Oklahoma, which he livestreamed on *America's Mayor Live*. During the live cast, Mr. Giuliani said the following about security footage from State Farm Arena depicting Plaintiffs:

> Fir- Fir- First**, I was sued by the two women who were counting multiple ballots in Georgia. We have them, one of them on tape doing it.** And I'm sued because I offered an opinion that they were doing it on radio and television. So I'm sued for defamation. **And I also pointed out that anybody could see it on tape that wanted to** . . . for these women, who I wasn't allowed to put in evidence, **the tape that shows them doing what I said they did** . . . **they don't have the evidence that I can show you tonight of them counting the ballots four times. One two, one two, four times four times four times.**[13]

24. On April 13, 2024, Mr. Giuliani reposted clips of his April 11, 2024 statements on *America's Mayor Live* to his Instagram. The clip includes Mr. Giuliani's claims that the "judgement was $145 million for these women, **I wasn't allowed to put in evidence the tape that shows them doing what I said they did**" and "I can show you tonight [evidence] of them, **counting the ballots four times, one two one two four times four times four times.**"[14]

25. On April 30, 2024 Mr. Giuliani appeared on *America's Mayor Live* and showed clips of security footage from State Farm Arena. He told viewers:

- He was ahead when they stol- stole it from him too in Georgia. 47, 44 Ted. So at the night of the election, Georgia stops counting at remember it's the whole thing about the was there a was there a- a complete like water main break or wasn't there? **Well, there wasn't a water main break but there's tape and the tape shows you**[;][15]

- in the key time when **they excluded the public.** The key time when **they threw them out. The key time when they cased the joint like I said. The key time when they were counting votes.** I'm going to show you this again. We've done it

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[13] Rudy W. Giuliani (@RudyGiuliani), *America's Mayor Live (384): The Fall of New York City & How the Giuliani Playbook Can Spur a Revival*, (April 11, 2024, 8:00 PM), https://twitter.com/i/broadcasts/1lPKqbpkgMYGb at 1:06:40–1:08:32.

[14] Rudy W. Giuliani (@therudygiuliani), Instagram (Apr. 13, 2024), https://www.instagram.com/p/C5taWK3NQrO.

[15] Rudy W. Giuliani (@RudyGiuliani), *America's Mayor Live (397): The Stunning Lack of Leadership at These So-Called Elite Universities* (April 30, 2024, 8:00 PM), https://twitter.com/RudyGiuliani/status/1785459381741801931 at 49:02–49:27.

> before. I have- Now, I have some of it. Not anywhere near the scope of they're doing it but all you got to do is do it once to go to federal prison, we should have them doing it 12, 15 tim- uh about 12 times. I'll tell you what it looks like it looks like this. We'll watch some tomorrow night takes a little while to find it. Well you want to look for it while I'm doing this? **So they take the ballots and they put it in. The ballots gets finished, they take them out. And they're supposed to do that with it. They put them in again. And they do it four times**[;][16]

- So they put it in. **They count it second time, take it back, reorganize the same ballots, put it in the fourth time.** I take it out, let it go and do you see this? **You see one of them who's involved in my case, do it twice. And then you see her cohort who isn't involved in the case but worked for them, do it two or three times**. Now, if we had all of the tape, you'd see a lot more of it. You'd see a lot more of it[;][17] and

- the original tapes, **which show these women run around like chickens without a head, excluding the people. I mean, it's we shouldn't even be fighting about this. You see how empty that was? They were counting ballots for sure. Nobody disputes this while it was empty like that. That's a violation of Georgia law.** And it makes all of the ballots arguably invalid. I certainly have a right to argue it. **When it looks like that you can't count votes.** And another section at exactly this time, they're counting votes. But there's no members of the public around and violates Georgia law.[18]

26. These are the exact same lies already held to be false and defamatory by the D.C. District Court.

27. Mr. Giuliani's persistence in making these statements after all that has transpired, coupled with his refusal to agree to refrain from continuing to make such statements, make clear that he intends to continue in his campaign of targeted defamation and harassment. Accordingly, there is an overwhelming, ongoing, and imminent risk that Mr. Giuliani will inflict substantial reputational and emotional harm on Plaintiffs. This has to stop.

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[16] *Id*. at 53:02–53:55.

[17] *Id*. at 54:56–55:29.

[18] *Id.* at 56:00–56:40.

28. Plaintiffs lack an adequate remedy at law. Mr. Giuliani has asserted his own insolvency in his chapter 11 case. In his words, Mr. Giuliani's "filing was precipitated by the issuance of a $148 million dollar verdict entered against the Debtor along with numerous other lawsuits currently pending."[19] His assets are estimated to be worth up to $10 million.[20] His debts total over $150 million, which does not account for the five creditors with unliquidated claims against Mr. Giuliani—Mr. Eric Coomer, Ph.D, Ms. Noelle Dunphy, Mr. Robert Hunter Biden, Smartmatic USA Corp., and US Dominion Inc.[21] Absent injunctive relief, Plaintiffs will continue to suffer injuries that Mr. Giuliani has no ability to compensate.

29. Even if Mr. Giuliani were not insolvent and could conceivably recompense Plaintiffs, an injunction is the only way to stop Mr. Giuliani from continuing to spread the specific claims about Plaintiffs already held to be false, defamatory, and unprotected.

CAUSE OF ACTION: DEFAMATION PER SE

30. Plaintiffs incorporate all paragraphs in this Complaint as if fully set forth herein.

31. As has been conclusively determined in the Freeman Litigation, Mr. Giuliani's statements are false statements of and concerning Plaintiffs, that accuse Ms. Freeman and Ms. Moss of criminal acts and therefore, are defamatory *per se*.[22]

32. Mr. Giuliani published, caused to publish, or reasonably could have foreseen the publication of post-petition defamatory statements about Ms. Freeman and Ms. Moss, including by and through his agents and by republishing the statements on his website, social media accounts,

[19] *In re Rudolph W. Giuliani*, No. 23-12055 (SHL), ECF No. 5 ¶ 5.

[20] *In re Rudolph W. Giuliani*, No. 23-12055 (SHL), ECF No. 1 at 6.

[21] *In re Rudolph W. Giuliani*, No. 23-12055 (SHL), ECF No. 2.

[22] *Freeman v. Giuliani*, No. CV 21-3354 (BAH), 2022 WL 16551323, at *8 (D.D.C. Oct. 31, 2022).

and media programs—including but not limited to *America's Mayor Live*, *America's Mayor Confidential*—which are republished on multiple platforms, including but not limited to Twitter/X, Rumble, YouTube, Instagram, and Gettr.

33. As reasonably foreseeable—and intended—these statements caused Plaintiffs significant reputational and emotional harm, and if repeated will continue to cause Plaintiffs significant reputational and emotional harm.

34. As has been conclusively determined in the Freeman Litigation, Mr. Giuliani has made these statements with actual malice, i.e., with the knowledge that they are false.

35. As has been conclusively determined in the Freeman Litigation, Mr. Giuliani had and has no applicable privilege or legal authorization to continue to make false statements about Ms. Freeman and Ms. Moss. He did not and does not neutrally report allegations about Ms. Freeman and Ms. Moss. Further, Mr. Giuliani's statements can be reasonably understood to imply provably false facts and are not First Amendment protected statements of opinion.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court enter judgment:

a) Permanently enjoining Mr. Giuliani from repeating the defamatory statements for which he has been held liable in the Freeman Litigation, and any substantially similar statements, pursuant to Federal Rule of Bankruptcy Procedure 7065 and Federal Rule of Civil Procedure 65; and

b) Granting Plaintiffs such other and further relief as this Court deems just and proper.

Dated: May 10, 2024

/s/ Rachel C. Strickland

Michael J. Gottlieb
Meryl C. Governski (admitted *pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
mgottlieb@willkie.com
mgovernski@willkie.com

Von A. DuBose (*pro hac vice* forthcoming)
DUBOSE MILLER LLC
75 14th Street NE
Suite 2110
Atlanta, GA 30309
Telephone: (404) 720-8111
dubose@dubosemiller.com

Rachel C. Strickland
Aaron E. Nathan
James H. Burbage
M. Annie Houghton-Larsen
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111
rstrickland@willkie.com
anathan@willkie.com
jburbage@willkie.com
mhoughton-larsen@willkie.com

John Langford
Rachel Goodman UNITED TO PROTECT DEMOCRACY
82 Nassau Street, #601
New York, NY 10038
Telephone: (202) 579-4582
john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUBY FREEMAN and WANDREA MOSS, Plaintiffs, v. RUDOLPH W. GIULIANI, Defendant.	Civil Action No. 21-3354 (BAH) JURY TRIAL DEMANDED **AMENDED COMPLAINT**

Plaintiffs Ruby Freeman and Wandrea Moss ("Plaintiffs"), through their attorneys, bring this complaint against Defendant Rudolph W. Giuliani ("Defendant").

INTRODUCTION

1. The conduct of free and fair elections in the United States relies upon the service of nonpartisan election workers. For most of American history, these ordinary citizens have received thanks for their efforts, even from those candidates who have come up short. In the 2020 federal election, however, that venerable tradition was decimated by anti-democratic actors desperate for scapegoats whom they could blame for election results that they refused to accept.

2. Through no fault of their own, Plaintiffs Ruby Freeman and Wandrea ArShaye ("Shaye") Moss are among those scapegoats. They served as official election workers in Georgia during the 2020 federal election. Like countless other election workers, they share a patriotic commitment to a free and fair democratic process.

3. As a result of their vital service, Ms. Freeman and Ms. Moss have become the objects of vitriol, threats, and harassment. They found themselves in this unenviable position not

based on anything they did, but instead because of a campaign of malicious lies designed to accuse them of interfering with a fair and impartial election, which is precisely what each of them swore an oath to protect.

4. Defendant Rudy Giuliani bears substantial and outsized responsibility for the campaign of partisan character assassination of Ms. Freeman and Ms. Moss. He orchestrated a sustained smear campaign, repeatedly accusing Ms. Freeman and Ms. Moss, by name, on television and on the Internet and social media networks of committing election fraud in order to alter the outcome of the 2020 presidential election in Georgia. Specifically, Defendant Giuliani published, caused to be published, and foreseeably led others to publish false accusations that Ms. Freeman and Ms. Moss had committed election fraud by, among other things:

- engaging in a criminal conspiracy, along with others, to illegally exclude observers during the counting of ballots "under false pretenses" so that they could engage in election fraud;
- criminally and/or fraudulently introducing "suitcases" of illegal ballots into the ballot-counting process;
- criminally and/or fraudulently counting the same ballots multiple times in order to swing the results of the election;
- surreptitiously passing around flash drives that were not supposed to be placed in Dominion voting machines; and
- committing other crimes, including participating in something that amounted to the "crime of the century."

5. Defendant Giuliani, a member of former President Donald J. Trump's 2020 presidential campaign team and a former sometime lawyer to Trump, is a key figure in orchestrating and disseminating the conspiracy theory that the 2020 election was "stolen" from Trump by now-President Joseph R. Biden, Jr. through coordinated large-scale election fraud across key swing states, including Georgia. With knowledge that the allegations against Ms. Freeman

and Ms. Moss were false or with reckless disregard for their falsity, over a period of more than 18 months and continuing even after Plaintiffs initiated this action, Defendant Giuliani has relentlessly, repeatedly, and publicly accused Plaintiffs of engaging in the illegal act of election fraud, among other baseless smears. He has spread these lies in numerous meetings, on television, in conversations with incumbent candidate Trump and other Trump campaign members, and on the Internet, when it was at least reasonably foreseeable that others would repeat these claims as truth.

6. On December 3, 2020, the Trump campaign published an excerpted clip from State Farm Arena security camera video showing grainy images of Ms. Freeman and Ms. Moss (then-unnamed, but later identified on air and on the Internet as Ms. Freeman and Ms. Moss) counting ballots (the "Trump Edited Video").[1] Defendant Giuliani re-published the Trump Edited Video on his Twitter account that afternoon.

7. Within 24 hours of the original publication by Defendant Giuliani and the Trump campaign of these lies on December 3, 2020, Georgia election officials had publicly and definitively debunked the claims about Ms. Freeman and Ms. Moss. They publicly explained in detail what the misinterpreted video did ***not*** show: no suitcases; no illegal ballot counting; no election fraud. A full hand recount of Georgia's election results had already confirmed the election results and, by December 7, so would a second recount requested by the Trump campaign. Through December and January, Georgia's Republican election officials continued to explain to the public, again and again, that thorough reviews had disproven Defendant's false claims and had proven that there had been no illegal or improper ballot counting.

[1] The video is edited in the sense that it is excerpted from a much longer tape.

8. Despite knowing that the Georgia election officials had refuted the allegations of wrongdoing, Defendant Giuliani chose to deliberately disregard the truth and instead to use the Trump Edited Video to continue to fabricate and publish lies about Ms. Freeman and Ms. Moss.

9. Defendant Giuliani's character assassination of Ms. Freeman and Ms. Moss was deliberate. Around December 2020, Defendant Giuliani launched a "Strategic Communications Plan" ("Strategic Plan") designed to overturn the 2020 election by engaging in a "[n]ationwide communications outreach campaign to educate the public on the fraud numbers" during the ten-day period between December 27, 2020, and January 6, 2021.[2] The Strategic Plan's messaging relied on the following call to action: "YOU CANNOT LET AMERICA ITSELF BE STOLEN BY CRIMINALS – YOU MUST TAKE A STAND AND YOU MUST TAKE IT TODAY."

10. Giuliani's Strategic Plan identified Ms. Freeman and Ms. Moss *by name* and falsely accused them of engaging in the criminal act of voter fraud. Under the heading "Election Officials' Illegal Actions," the Strategic Plan stated, "Election Official Ruby Freeman is seen surreptitiously & illegally handing off hard-drives ON CAMERA in the Georgia counting facility." It references the "Video of Ruby and Shay [sic]" at midnight and also stated "Ruby Freeman (woman in purple shirt on video), now under arrest and providing evidence against GA SOS Stacey Abrams and DNC on advanced coordinated effort to commit voter / election fraud" which was then followed by bracketed text acknowledging no basis for the statement: "[*need confirmation of arrest and evidence*]."

[2] Giuliani Presidential Legal Defense Team, *Strategic Communications Plan* (Dec. 17, 2020), *available at* https://perma.cc/VP2S-CJMR.

11. Giuliani's Strategic Plan listed more than a dozen "CHANNELS TO DISSEMINATE MESSAGING," which included "Presidential Tweets[,] Giuliani Team Tweets[,] Talk Radio[,] Conservative Bloggers[,] YouTube Influencers" and "Social Media Influencers."

12. Defendant Giuliani launched the Strategic Plan, a significant part of which consisted of Defendant Giuliani publishing widely lies about Ms. Freeman and Ms. Moss by name. He amplified his defamatory statements by publishing them on a variety of channels, including on television and on social media. He encouraged those listening to watch and spread the defamatory clips repeatedly. As intended, numerous third-party publishers republished Giuliani's false accusations to millions of viewers and readers, identifying Ms. Freeman and Ms. Moss by name while showing clips from the Trump Edited Video and leveling additional false and malicious accusations of criminal election fraud against them. Defendant Giuliani continued to repeat and republish the false and defamatory statements throughout 2021 and into 2022, including after Plaintiffs initiated this action. With no concern for the truth, or for the real-life consequences of his willful lies, Defendant Giuliani falsely and baselessly portrayed Plaintiffs as traitors who participated in a conspiracy to steal the presidential election in Georgia.

13. Contrary to Defendant Giuliani's widely disseminated lies, at no time did Ms. Freeman or Ms. Moss ever: conspire to clear poll watchers from the room where they were counting ballots, produce secret "suitcases" full of illegal ballots, or illegally count ballots multiple times. There is not, and has never been, any basis for these statements, either in the Trump Edited Video or in any other document, photograph or credible evidence.

14. The lies about Plaintiffs have had prolonged and tragic consequences for their lives and well-being. As a result of Defendant Giuliani's defamatory campaign, Ms. Freeman and Ms. Moss were subjected to an immediate onslaught of violent and racist threats and harassment, and

such threats and harassment continue to appear online to this day. Their personal and professional reputations have been destroyed. From the period after Defendant Giuliani started broadcasting lies about them to the present, Ms. Freeman and Ms. Moss have feared for their physical safety and have suffered a devastating emotional toll.

15. At the height of Defendant's disinformation campaign, Ms. Freeman, at the recommendation of the FBI, fled her home and did not return for more than two months. On at least two occasions, strangers showed up at her grandmother's home, an address where Ms. Moss had once lived, and attempted to push into the house in order to make a "citizens' arrest." On or about January 5, 2021, a group of strangers on foot and in vehicles surrounded Ms. Freeman's house. In addition, Ms. Freeman was forced to shutter an online business because her use of social media resulted in continuing threats and slanders against her.

16. In her subsequent work on Fulton County elections, Ms. Moss suffered continuing personal and professional consequences. At work, harassing and threatening email messages from the public went to a listserv that included Ms. Moss and her colleagues, making her a target at her workplace. She has subsequently been driven to seek new employment.

17. As a result of Defendant's ongoing campaign, the Plaintiffs can no longer live normal lives. If she hears her name called in public, Ms. Freeman is afraid that she will be identified and attacked. Ms. Moss fears even visiting a grocery store, where she might be recognized.

18. The targeting of America's election workers—whose service to our system of government places them in the crosshairs of those who seek to undermine it—imposes a devastating human cost on those individuals and their families. It also undermines the principle that citizens can and overwhelmingly do participate in national elections with impartiality and

integrity. Deliberate efforts to spread disinformation about America's election workers undermine the integrity of American elections, discourage public participation in the electoral process, and accordingly, threaten democracy.

PARTIES

19. **Plaintiff Ruby Freeman** worked as a temporary election worker with the Fulton County Registration and Elections Department during the 2020 general election to assist in the electoral process of counting votes that would eventually determine the delegates Georgia sent to Washington, D.C., to certify the presidential election. Her responsibilities included verifying signatures on absentee ballots and preparing absentee ballots for counting and processing. She is a citizen of Georgia.

20. **Plaintiff Wandrea "Shaye" Moss** worked on Fulton County's absentee ballot operation during the 2020 general election. She worked for the Fulton County Registration and Elections Department beginning in 2012. During the 2020 election, Ms. Moss's position with the County was as a Registration Officer, and her responsibilities included processing voter applications and assisting voters in person and over the phone. She is a citizen of Georgia.

21. **Defendant Rudolph W. Giuliani** is a former politician and government official who has become a podcast and radio show host, a pundit on other channels, and (at times) he was the personal attorney to Donald Trump. Defendant's law licenses have been suspended in his home state of New York and in the District of Columbia (the "District") because of his knowing or reckless falsifications, including his lies about Plaintiffs. He is domiciled in New York but has engaged in a persistent course of conduct in the District relating to the statements at issue and he has admitted in answering the Plaintiffs' first Complaint that he made some of the defamatory statements described below from the District.

JURISDICTION AND VENUE

22. This Court has original jurisdiction over this action and Defendant pursuant to 28 U.S.C. § 1332(a)(1), as the matter in controversy exceeds $75,000 exclusive of interests and costs and is between citizens of different states.

23. This Court may exercise personal jurisdiction over Rudolph Giuliani pursuant to § 13-423 of the District of Columbia Code because he: (i) transacted business within the District of Columbia; (ii) was licensed to practice law in the District of Columbia; (iii) caused tortious injury by acts committed within the District of Columbia, including by making false and defamatory statements about Plaintiffs from within the District of Columbia, and/or, on information and belief, directly to individuals within the District of Columbia; and (iv) caused tortious injury by acts committed outside the District of Columbia while regularly doing business within, engaging in persistent conduct within, and deriving substantial revenue from services rendered within the District of Columbia.

24. Alternatively, this Court has personal jurisdiction over Defendant Giuliani pursuant to D.C. Code § 13-423(a) because Defendant committed acts in the District of Columbia that caused tortious injury to Plaintiffs within the District of Columbia. Defendant made defamatory statements that were produced and published in the District of Columbia. The publication of defamatory content within the District constitutes overt acts that furthered Defendant's common scheme with other individuals. Further, the publication of defamatory content about Plaintiffs, both from within and without the District, was directed, in part, to legislators, officials, and constituents in the District for the purpose of preventing the transfer of power from former President Trump to President Biden and, thereafter, causing power to be transferred back to former

President Trump. As a result, Plaintiffs suffered tortious injury in the District of Columbia by virtue of the publication of defamatory content in the District.

25. Defendant Giuliani does not contest this Court's exercise of personal jurisdiction over him.

26. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to this action occurred in the District of Columbia.

BACKGROUND

27. Liability in this case is predicated on a series of defamatory statements which Defendant Giuliani published or caused to be published beginning on December 23, 2020. This background section provides facts and context about the parties and the events in the weeks leading up to those actionable statements.

A. Plaintiffs Serve as Election Workers in the 2020 Election in Fulton County, Georgia.

28. In the lead-up to Election Day 2020, Georgia "emerged as one of the nation's biggest electoral battlegrounds in the race for the White House."[3]

29. The voting process in Georgia began on September 15, 2020, when local officials began mailing out absentee ballots.[4] Voters could cast early voting ballots in person from October 12, 2020, until October 30, 2020, and they could vote by mail until Election Day, on November 3, 2020.[5] All told, more than 4 million Georgians cast ballots during early voting or via absentee

[3] Greg Bluestein, *Election Day Arrives: 5 Factors That Will Decide Georgia's 2020 Race*, ATLANTA J.-CONST. (Nov. 3, 2020), https://perma.cc/MGH2-NUEY; *see also id.* (noting how "tantalizingly close" Democrats came to winning a statewide official in 2018).

[4] Ga. Sec'y of State, 2020 State Elections and Voter Registration Calendar, https://perma.cc/XKQ4-6QAF (last visited Dec. 22, 2021).

[5] Claire Simms et al., *Voting in Georgia 2020: Registering to Vote, Absentee Ballots, and More*, Fox 5 Atlanta (Oct. 28, 2020), https://perma.cc/4SAD-8KH6.

ballot in the 2020 election.[6] On Election Day, when another 975,540 people cast votes,[7] Georgia Secretary of State Brad Raffensperger observed, "We are having a successful election in Georgia today."[8]

30. In Fulton County, absentee ballots were counted in the State Farm Arena.

31. Plaintiff Wandrea Moss had worked on elections in Fulton County since 2012, and had been tabulating ballots in every election throughout that period. In 2020, she was assigned to focus on the tabulation of absentee ballots.

32. Plaintiff Ruby Freeman had signed up to be a temporary worker for the November 2020 election. She was asked to join the work at State Farm Arena.

33. On November 13, 2020, NBC, ABC, CBS, and CNN declared Joe Biden the projected winner of Georgia,[9] followed by Fox News and the Associated Press on November 19, 2020.[10]

34. From November 11 through November 19, 2020, county election officials carried out a risk-limiting audit, which included a full manual tally of all votes cast, and confirmed Biden had won Georgia's election: "Audit boards from all 159 Georgia countries examined 41[,]881 batches, hand-sorting and counting each ballot as part of the process, which was the largest hand

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[6] November 3, 2020 General Election, *President of the United States*, Ga. Sec'y of State, https://perma.cc/VM2L-5JPZ (last visited Mar. 17, 2022).

[7] *Id*.

[8] Kate Brumback & Sudhin Thanawala, *Despite A Few Hiccups, Voting in Georgia Goes Smoothly*, Associated Press, Nov. 3, 2020, https://perma.cc/77K9-QBYS?type=image.

[9] *AP: Trump Wins North Carolina but Georgia Too Close to Call*, ABC10.com (Nov. 13, 2020), https://perma.cc/D3A5-G9DG.

[10] *FOX News, AP calls Georgia for Biden As State Finalized Hand Recount Audit*, FOX 5 Atlanta (Nov. 20, 2020), https://perma.cc/V8FB-TQRD.

count of ballots in United States history."[11] According to the audit report, "no individual county showed a variation in margin larger than 0.73%." Moreover, "103 of the 159 counties showed a margin variation of less than 0.05%."[12] It concluded "the correct winner was reported."[13]

35. On November 20, 2020, Secretary of State Raffensperger certified Biden's victory.[14] That same day, Republican Governor Brian Kemp certified Georgia's election results.[15]

36. President Trump requested a recount, which was conducted using scanners that read and tallied the votes.[16] The recount was the third tally of votes in the Georgia presidential race and the third tally to conclude that President Biden had won the election.[17] On December 7, 2020, Georgia officials recertified President Biden's victory of the state's 16 electoral votes.[18]

B. Defendant Giuliani and Trump's Campaign Team Spread the Lie That Election Workers Had Illegally Instructed Observers to Leave and Counted Thousands of Fraudulent Ballots Unobserved.

37. On December 3, 2020, Trump Campaign surrogates testified before the Georgia Senate, alleging that fraud and misconduct had occurred during Georgia's November 2020 election.[19]

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[11] Ga. Sec'y of State, *Risk-Limiting Audit Report: Georgia Presidential Contest*, *November 2020* (Nov. 19, 2020), https://perma.cc/3CT8-W9BC.

[12] *Id*.

[13] *Id*.

[14] Kate Brumback, *Georgia Officials Certify Election Results Showing Biden Win*, Associated Press (Nov. 20, 2020), https://perma.cc/4LMY-ZL52?type=image.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] Beau Evans, *Georgia Senate Panel Hosts Trump Attorney Giuliani As Election Officials Dispute Fraud Claims*, Augusta Chron. (Dec. 3, 2020), https://perma.cc/T8ZS-4F8V.

38. At the hearing, a lawyer assisting the Trump campaign played snippets of the Trump Edited Video[20] while a campaign surrogate claimed that Republican observers had been asked to leave the arena in contravention of Georgia law and that, once they were gone, Plaintiffs and other election workers produced and counted 18,000 hidden, fraudulent ballots—more than the margin of victory in the Georgia presidential race.[21] The surrogate referred to "suitcases of ballots [stored] under a table, under a tablecloth;" identified the election workers in the room as "the lady in purple," "two women in yellow," and "the lady with the blond braids also, who told everyone to leave;" and stated "one of them had the name Ruby across her shirt somewhere."[22]

39. That same day, the Trump Campaign published the Trump Edited Video on Twitter and tweeted that it showed "suitcases filled with ballots pulled from under a table AFTER supervisors told poll workers to leave room and 4 people stayed behind to keep counting votes." On December 3 and 4, Defendant Giuliani repeatedly broadcast the lie on his own Twitter account[23]:

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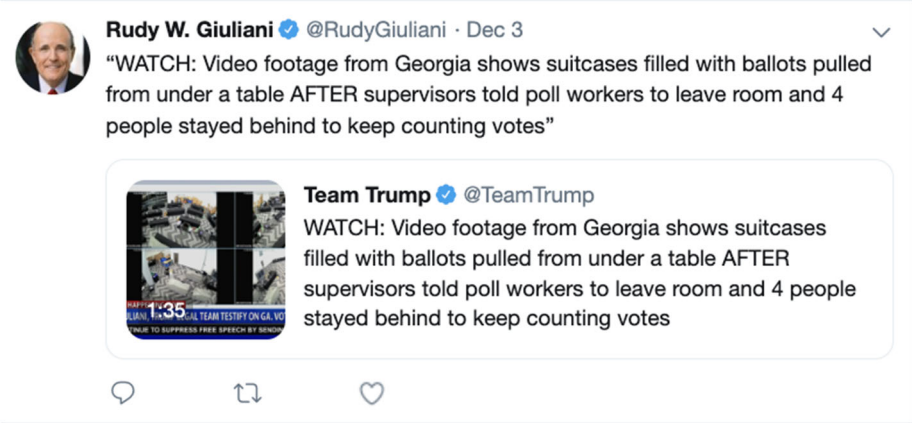
[20] 11Alive, *Second Georgia Senate Election Hearing*, YouTube (Dec. 3, 2020), https://perma.cc/GM2R-HX44?type=image (showing Trump campaign volunteer Jacki Pick's commentary on the surveillance footage from 33:27 to 50:26).

[21] Angelo Fichera, *Video Doesn't Show 'Suitcases' of Illegal Ballots in Georgia*, FactCheck.org (Dec. 7, 2020),), https://perma.cc/Z3P2-A3DC. For video of the hearing, see also 11Alive, *Second Georgia Senate Election Hearing*, YouTube (Dec. 3, 2020), https://perma.cc/GM2R-HX44?type=image.

[22] 11Alive, *Second Georgia Senate Election Hearing*, YouTube (Dec. 3, 2020), https://perma.cc/GM2R-HX44?type=image.

[23] Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 3, 2020), *available at* https://perma.cc/2DTZ-LGVP; *see also* Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 3, 2020, 1:48 PM), https://perma.cc/EGH5-NJK7?type=image; Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 3, 2020, 10:14 PM), https://perma.cc/PSL3-KBPP?type=image; Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 4, 2020, 9:12 AM), https://perma.cc/H5SN-SGL2; Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 4, 2020, 5:03 PM), https://perma.cc/TE8Y-MA5U; Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 4, 2020, 6:23 PM), https://perma.cc/7N5Z-CNXA.



C. The Lie About Georgia Election Fraud Was Promptly and Authoritatively Refuted.

40. Both the Office of the Georgia Secretary of State (led by a Republican who endorsed former President Trump during the 2020 campaign) and the Georgia Bureau of Investigation immediately investigated Defendant's claims. They reviewed the security videotape in its entirety, interviewed all witnesses who were present at the time of the alleged misconduct, and found no evidence whatsoever to substantiate any of the claims.[24]

41. At 5:41 a.m. on December 4, 2020, the Voting Implementation Manager for the State of Georgia, Gabriel Sterling, refuted the false claims of election fraud on Twitter: "The 90 second video of election workers at State Farm arena, purporting to show fraud was watched in its entirety (hours) by @GaSecofState investigators. Shows normal ballot processing. Here is the fact check on it."[25]

42. Mr. Sterling's tweet shared a link to a fact-check published by Lead Stories, a fact-checking website that identifies false or misleading stories. It demonstrated that the Trump Edited

[24] *See* Response of the Georgia Secretary of State to the Court's Order of September 20, 2021 ("McGovern's Resp."), *Favorito v. Wan*, Civ. No. 2020CV343938 (Fulton Cnty. Ga. Super. Ct. Oct. 12, 2021), https://perma.cc/PYU3-G5K4.

[25] Gabriel Sterling (@GabrielSterling), Twitter (Dec. 4, 2020, 5:41 AM), https://perma.cc/7KMR-EJ4B.

Video did not show suitcases full of ballots being pulled from under a table, and that poll watchers were not told to leave.[26] The fact-check quotes Georgia election officials explaining that the containers in the video contained ballots that were processed for counting earlier in the night, that the vote count data and voter verifications negated the claim that thousands of fraudulent ballots had been introduced into the count, and that it was not illegal for election workers to count ballots in the observers' absence.[27]

43. On December 4, 2020, Georgia Public Broadcasting published its own article fact checking the election fraud claims made during the Georgia Senate hearing the previous day. The article directly refuted the Trump legal team's claims concerning the contents of the Trump Edited Video. It reported that the video showed a normal tabulation process, which both state and county officials had verified. It also reported that no observers had been asked to leave, but Republican monitors and the press did leave when some election employees stopped their work for the night. And it clarified that Georgia law does not require poll monitors to be present for the ballot-counting process.[28]

44. Also on December 4, 2020, in a roughly 17-minute televised Newsmax segment, Mr. Sterling again explained why the video did not show any fraud:

> Unlike watching 90 seconds of it like we saw in the Senate hearing yesterday, we've had our investigators watch all many several hours of it yesterday. And what essentially happened is—and we knew about this, part of this, on election night itself—around 10:15/10:20, there's two groups of people in this room that are

[26] Alan Duke & Hallie Golden, *Fact Check: Video from Georgia Does Not Show Suitcases Filled with Ballots Suspiciously Pulled from Under a Table; Poll Watchers Were Not Told to Leave*, Lead Stories (Dec. 3, 2020), https://perma.cc/MF7H-AV2P.

[27] *Id.*; *see* Angelo Fichera, *Video Doesn't Show 'Suitcases' of Illegal Ballots in Georgia*, FactCheck.org (Dec. 4, 2020), https://perma.cc/Z3P2-A3DC.

[28] Stephen Fowler, *Fact Checking Rudy Giuliani's Grandiose Georgia Election Fraud Claim*, Georgia Public Broadcasting (Dec. 4, 2020, 8:27 AM), https://perma.cc/84FL-XCTY.

working. There are cutters—the people who are opening the envelopes—and then there's the people who are scanning, which is the ones we see on the video.

And let's keep a few other things in mind. I've been in this room. It's really obvious there's video cameras everywhere, so they know they're being watched on that front.

So what happened was, when the cutters were—they were, once they were done, they were, they was like, "Okay, we're done, time to go home," and the media started packing up. And then the monitors kept packing up.

Now the one thing we have is a he said, she said, where the officials there said, "We didn't tell anybody that they had to leave." The people who left—the Republican monitor said, "we were told we had to leave." And we have no audio from those videotapes to ascertain the absolute truth. That's what is he said she said on that front.

But when you watch the video, the process—those aren't suitcases. Those are regular absentee carriers used in dozens of counties across the state. That's how they bring those in. Nothing was brought in without the monitors there, so everything was there. There was nothing new brought in. We didn't see somebody wheeling stuff into the room; we saw stuff that was already in the room that the monitors already saw brought in.

And then you saw the processes they're doing. Essentially what happened, the elections director called the absentee coordinator that's saying we're not shutting down. Tell them they gotta go get back to work because the counting people thought they were also getting to go home. So they were kind of disappointed. So you see him on his phone. He walks over to them, they kind of shrug their shoulders like, "crap, we got to go back to work again." So, so they started doing that, and then we found out that the monitors weren't there anymore. So, we called their elections directors, and we called our state elections board monitor, who we have placed in Fulton County under a consent decree that we had ordered because of their screw-ups in the June election, and yes, there was 82 minutes where there wasn't a person there. But we have all the videotape that we are literally looking at right now.

We have to ask ourselves in that period of time, I think it was about three to five thousand votes that were scanned, and did this elections crew of, you know, medium-paid, tired elections workers

> suddenly become the Ocean's Eleven crew as part of a theft of an election? Or is it more likely they were tired and irritated?
>
> You see when the SEB monitor gets there, and when the investigator gets there, the armed investigator, they keep doing the exact same thing they were doing. They don't even pay him any mind because it's just—they're doing their regular processes.
>
> And the problem we have is people don't understand this, and when people whip people's emotions up, it goes back to the issue I was talking about before of threats being against these thousands of workers across the country.[29]

45. On December 4, 2020, PolitiFact—a nonprofit website that checks the accuracy of claims made by elected officials and others—published another fact-check of the claim repeatedly made by Defendant that video footage from Georgia showed suitcases filled with ballots being illegally counted after election monitors were told to leave. The PolitiFact article confirmed the conclusions of Lead Stories and Georgia Public Broadcasting that the claim was plainly false. It featured a statement from Fulton County Registration and Elections Director Richard Barron, who confirmed that no announcement was made telling people to leave. Rather, certain staff members left as their work was finished. Mr. Barron himself told the workers scanning the ballots to keep working. Mr. Barron also confirmed that it was normal to keep containers under the tables near the scanners.[30]

46. On December 5, 2020, Defendant continued to publish and amplify the lies about the Plaintiffs.[31]

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[29] Monkey Savant, *Gabriel Sterling & Chad Robichaux on Newsmax Discuss the GA Ballot Fraud Situation 12/04/20*, YouTube (Dec. 4, 2020), https://perma.cc/5X7N-8FYS?type=image.

[30] Bill McCarthy, *No, Georgia Election Workers Didn't Kick Out Observers and Illegally Count 'Suitcases' of Ballots*, PolitiFact (Dec. 4, 2020), https://perma.cc/JAT3-Y4FQ.

[31] OAN, *President Trump's Legal Team Presents Evidence of Alleged Voter Fraud in Ga.*, YouTube (Dec. 5, 2020), https://perma.cc/4ETA-TR4K?type=image; OAN, *Georgia Senate Hearing Shares Surveillance Footage Revealing Potential Ballot Stuffing*, Rumble (Dec. 5, 2020), https://perma.cc/Z7PF-RDAN; OAN (@OANN), Twitter (Dec. 5, 2020, 11:31 AM),

47. On December 6, 2020, in *Pearson v. Kemp*, Civ. No. 1:20-cv-04809-TCB (N.D. Ga.), Georgia Governor Brian Kemp filed a sworn affidavit from Frances Watson, chief investigator for the Georgia Secretary of State, further refuting these lies.[32] Governor Kemp filed this affidavit in response to claims by a group of presidential electors for former President Trump of widespread election-related misconduct. The affidavit detailed the results of an investigation by Ms. Watson into the alleged events at the State Farm Arena. Ms. Watson attested that her investigative team interviewed witnesses and reviewed the entire security footage. Her investigation found that (i) observers and members of the press were *not* told to leave, but exited the room after seeing a group of workers responsible for opening envelopes leave; and (ii) no ballots were brought in from an unknown location and hidden under a table. She also stated that the video showed opened but uncounted ballots being placed in boxes and stored under the table, and later showed the boxes being reopened so the workers could scan the ballots when the counting resumed later that night.

48. The Watson affidavit's submission and its content were widely reported in the press on December 6 and 7, 2020.[33]

49. On December 7, 2020, Georgia Secretary of State Brad Raffensperger held a widely covered press conference to announce that Georgia was re-certifying the results of the 2020

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https://perma.cc/23FQ-WE9W; Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 5, 2020, 12:49 PM), https://perma.cc/RT9Y-CDQW.

[32] Decl. of Frances Watson, *Pearson v. Kemp*, Civ. No. 1:20-cv-04809-TCB (N.D. Ga. Dec. 6, 2020), ECF No. 72-1, *available at* https://perma.cc/4WAJ-H3MV.

[33] *See*, *e.g.,* Daniel Chaitin, *Chief Georgia Investigator: No 'Mystery Ballots' Seen in Security Video,* Wash. Examiner (Dec. 6, 2020), https://perma.cc/6TTM-KXEY; Ronn Blitzer, *No 'Mystery Ballots' Hidden under Table in Fulton County, Georgia Investigator Swears in Affidavit*, Fox News (Dec. 7, 2020), https://perma.cc/VBQ5-ZLY8; Peter Weber, *Georgia's Top Election Investigator Debunks a Vote Fraud Conspiracy Involving 'Suitcases' of Ballots, a Urinal*, Yahoo News (Dec. 7, 2020), https://perma.cc/S734-R6Y2.

election.[34] After announcing the recertification, Secretary Raffensperger introduced Mr. Sterling, who once more refuted the lies about the Trump Edited Video that Defendant Giuliani was continuing to spread. Mr. Sterling yet again confirmed that the surveillance video showed that the containers taken from under a table held valid, uncounted ballots that had been stored by workers who thought they were leaving for the night. After realizing that they were staying, the workers unpacked the ballots from the containers and resumed scanning them.[35]

50. Mr. Sterling then specifically refuted the claim that Plaintiffs had illegally scanned the same ballots multiple times:

> Sterling: Is there any other disinformation I missed over the weekend guys? . . .
>
> Reporter: The one I keep hearing over and over, is a woman scanning ballots over and over and over again. Can you explain whether the machines can count a ballot three times?
>
> Sterling: Well if it, if it counted it five times, guess what, it would have shown up in the hand count. Because if you do the same batch, let's say—I don't even know how many there were, a hundred, two hundred, whatever it was—and let's say you do it three times, they would have been 600 off on that on the hand count. They weren't. I mean, it's just, as I've said, and y'all have heard me say it before, it's a ridiculous game of whack-a-mole.[36]

51. Sterling's press conference and his refutation of the lie that Plaintiffs illegally scanned ballots multiple times were widely reported.[37]

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[34] *Georgia Final 2020 Presidential Recount Results*, C-SPAN (Dec. 7, 2020), https://perma.cc/6NET-C29R?type=image.

[35] *Id.*

[36] *Id.*

[37] *See, e.g.*, Nick Corasaniti, *Top Georgia Election Official Debunks 'Ridiculous' Claims about Election Fraud*, N.Y. Times (Dec. 7, 2020), https://perma.cc/7TYA-AWYL.

D. By December 7, 2020, the Truth of What Had Happened – and What Did Not Happen – at the State Farm Arena on the Evening of November 3 Had Been Widely Reported.

52. As described above, beginning on December 3, 2020, the Georgia Secretary of State and Georgia Bureau of Investigation immediately investigated Defendant Giuliani's claims. As of December 7, 2020, from the reported results of their investigations, along with widely disseminated independent fact-checks and the reported results of the two recounts, including a hand recount and a machine recount, generally available public information had definitively established that:

a) the water leak reported at the State Farm Arena on November 3 turned out to be an overflowing urinal;

b) the flooding did not affect the counting of votes;

c) no announcement was made telling monitors, members of the press, or others to leave on election night;

d) no ballots were brought into the arena from an unknown location;

e) the supposed "suitcases" of illegal ballots were not suitcases, but regular ballot containers filled with valid, uncounted ballots;

f) those ballots were not "hidden," but stored, and no one tampered with those ballots;

g) there was no evidence that Plaintiffs had illegally counted ballots multiple times, because they did not—if anyone had done so, there would have been a significant discrepancy between results of the hand count and the results on election night, and there was no such discrepancy;

h) the ballot processing in the Trump Edited Video was, in fact, entirely normal; and

i) neither Plaintiffs nor anyone else committed election fraud in Fulton County that altered the results of the election, and there was no credible evidence of any conspiracy to commit such fraud.

53. On information and belief, Defendant Giuliani learned of the numerous, authoritative refutations of the lies about Plaintiffs in real time or he recklessly disregarded them.

As described more fully below, he was certainly aware of them no later than December 7, 2020. Nevertheless, he continued to publish lies about Plaintiffs, including on December 9 and 10.[38]

54. No later than December 30, 2020, Secure the Vote, a website maintained by the office of the Georgia Secretary of State, posted a detailed timeline to fact-check the claims about what is depicted in the Trump Edited Video[39]; Secure the Vote subsequently added descriptions to the timeline, documenting the events from November 3, 2020 actually shown on the Trump Edited Video, including the following[40]:

5:22 AM	Workers arrive at State Farm Arena and discover a water leak. They immediately move tables and ballots away from the leak to prevent any water damage.
6:30 AM	Workers can be seen moving tables, but not tampering with ballots.
7:11 AM	Workers are seen vacuuming and drying the floors.
8:22 AM	Workers begin rearranging the room to its original layout. They move tables and ballot containers. The table under which a "suitcase" full of ballots was allegedly stashed is moved, revealing nothing hidden there.
9:57 PM	Poll workers prepare to stop work for the night and empty ballot containers are brought into the room. Workers then fill the containers with uncounted ballots.
10:06 PM	Poll workers store the containers with uncounted ballots under the table for the night while there are still many people in the room.

[38] Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 9, 2020, 11:26 AM), https://perma.cc/3GL9-5B4E; Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 10, 2020), *available at* https://perma.cc/RL93-ZS57 (re-tweeting Trump Edited Video); *see also* Stephen Fowler, *At Georgia House Hearing, Republicans' Baseless Claims of Voting Fraud Persist*, Ga. Pub. Broadcasting (Dec. 10, 2020, 11:25 AM), https://perma.cc/5YS4-KGU5.

[39] *Fact Check*, Secure the Vote, https://perma.cc/Z7E2-57NU (last visited Dec. 22, 2021).

[40] *State Farm Arena*, Secure the Vote, https://perma.cc/22F2-8MQU?type=image (last visited Dec. 22, 2021).

11:02 PM	After the Secretary of State[41] told poll workers they should continue working through the night, they remove the containers with uncounted ballots from underneath the table and resume their counting.

55. Moreover, these facts were widely reported again in the aftermath of President Trump's January 2, 2021, call with Secretary Raffensperger, and that call prompted additional fact-checks described more fully below.

56. Notwithstanding the immediate, authoritative, and repeated fact-checks, and Defendant's awareness of those fact-checks, Defendant has spent the last 18 months defaming Plaintiffs as described below and has never retracted his lies.

THE ACTIONABLE DEFAMATORY STATEMENTS

A. In December 2020, Defendant Giuliani Orchestrates, Coordinates, and Implements a Campaign to Defame Plaintiffs.

57. The Strategic Plan orchestrated by Defendant Giuliani identified the time period between December 27, 2020, and January 6, 2021, as the "10 Days To Execute This Plan & Certify President Trump."[42] Although styled as the "Presidential Legal Defense Team," Defendant Giuliani was not a government lawyer and it is clear from the document that the authors worked on behalf of the Trump Campaign and aimed to further the Trump Campaign's private political goals. The Strategic Plan became public in January 2022 as part of the work performed by the

[41] The Voting Implementation Manager for the State of Georgia, Gabriel Sterling, reported that Georgia's Secretary of State Brad Raffensperger ordered election workers to continue counting ballots through the night. Maggie Astor, *A Georgia Election Official Debunked Trump's Claims of Voter Fraud, Point by Point*, N.Y. Times (Jan. 4, 2021), https://perma.cc/5F4K-LADG.

[42] Giuliani Presidential Legal Defense Team, *Strategic Communications Plan* (Dec. 17, 2020), *available at* https://perma.cc/VP2S-CJMR.

congressional Select Committee to Investigate the January 6th Attack on the United States Capitol.[43]

58. The stated goal of the Giuliani Strategic Plan was: "Nationwide communications outreach campaign to educate the public on the fraud numbers, and inspire citizens to call upon legislators and Members of Congress to disregard the fraudulent vote count and certify the duly-elected President Trump."

59. The first of the "Issues" the Giuliani Strategic Plan identified was "MASSIVE CORRUPTION IN THE ELECTION PROCESS LED TO A VOTE TALLY THAT IS FRAUDULENT" and under the heading "**Fraudulent Ballots**" stated, "Fulton County, GA, video of suitcases of fraudulent ballots."

60. Under the headline "**Election Officials' Illegal Actions**," the Giuliani Strategic Plan identified Plaintiff Freeman by name: "Election Official Ruby Freeman is seen surreptitiously & illegally handing off hard-drives ON CAMERA in the Georgia counting facility."

61. The Giuliani Strategic Plan goes on to identify suggested "MESSAGING," to include asking "What do you elections officials have to hide?" and to tell "EVERYONE" that "***YOU CANNOT LET AMERICA ITSELF BE STOLEN BY CRIMINALS – YOU MUST TAKE A STAND AND YOU MUST TAKE IT TODAY***."[44]

62. As one of the "SUPPORTING DOCUMENTS" that were "Presented by the Giuliani Team," the Giuliani Strategic Plan included a series of "VOTER FRAUD HIGHLIGHTS

[43] The document was produced by former New York City police commissioner and ally of Giuliani Bernard Kerik as part of the investigation. *See* Nicholas Wu & Kyle Cheney, *Bernard Kerik Provides Batch of Documents to Jan. 6 Select Committee*, POLITICO (Dec. 31, 2021), https://perma.cc/59QR-R7T7.

[44] *Id.* at 4-5.

FOR THE 2020 US ELECTION" organized by state. The "GEORGIA" "VOTER FRAUD HIGHLIGHT[]" began by identifying Plaintiffs by name:[45]

GEORGIA

Margin: 10,000 votes

- Video of Ruby and Shay at midnight
  - That is the time of the 200,000 vote bump
    - Similar interruptions at same time in other states
  - No Watermain Break – a lie to get the Republican observers and media to leave at 10:30pm

63. The Giuliani Strategic Plan also identifies the "TOP 10 WORST FRAUD INCIDENTS BY STATE," and identifies Plaintiff Freeman by name as the first one under "**GEORGIA**" and claimed she is "under arrest" for being part of a "coordinated effort to commit voter/election fraud":[46]

GEORGIA

1. **"Suitcase Gate"** - Video of "ballot stuffing" when "suitcases" (container type) filled with ballots (approximately 6,000 in each container) were rolled out from under table at GA arena and placed in tabulation machines (one batch repeatedly tabulated at least 3 times) by [X number] of poll workers who remained AFTER all Poll Watchers (GOP and the like), press and all third parties were required to leave the premises per announcement at or about [___ AM] until [___ AM] in violation of election laws enacted by GA state legislature. Ruby Freeman (woman in purple shirt on video), now under arrest and providing evidence against GA SOS Stacey Abrams and DNC on advanced coordinated effort to commit voter / election fraud [*need confirmation of arrest and evidence*].

The face of the document itself acknowledges that despite making the claim, there was no confirmation of any "arrest" or supporting "evidence."

64. The Giuliani Strategic Plan directs and targets the defamatory statements about Plaintiffs to the District, including by identifying: the "**FOCUS OF CAMPAIGN**" to be "Republican Members" of the United States Congress; influential individuals in the District, including "Freedom Caucus Members" and Trump Advisor "Peter Navarro Team," as "**KEY**

[45] *Id.* at 9.
[46] *Id.* at 20.

TEAM MEMBERS"; planning "Protests in DC" as part of the "Targets" for "**RALLIES AND PROTESTS**."[47] It also indicates that Giuliani was working closely with President Trump and his campaign, located in the District.

B. Defendant Giuliani Executes the Plan to Defame Plaintiffs.

65. As he carefully planned, Defendant repeatedly defamed Plaintiffs across multiple widely viewed media platforms.

***December 23, 2020, Episode of Giuliani's* Common Sense**

66. On the December 23, 2020 edition of his video podcast, *Rudy Giuliani's Common Sense*, Giuliani identified Ms. Freeman by name as someone with "a history of voter fraud participation" and further defamed her as follows:

> There's a video recording in Fulton County, Georgia, of what is obviously, without any doubt, the theft of votes. You have to be a naive child or a completely dishonest partisan not to realize that **the observers are being thrown out of the room. A phony excuse of a water main break was used. They still were thrown out of the room, didn't want to leave. Once they were all left and a last check was done around the hall, the workers for Atlanta—for Fulton County—the five or six, one of whom has a history of voter fraud participation, Ruby Freeman, uh, they scurry under these desks.** Hardly where you would keep ballots, right? And they start taking ballots out and then put them on a wheelbarrow sort of thing and wheel them around. And you can see the ballots don't really look like, like absentee ballots that are in envelopes; they look more like pristine pieces of paper. And then they're given out and very quickly are being counted, counted, counted, counted, there are times in which it appears that they were being counted more than one time—three, four, five, six, seven times, eight times. . . . **[I]t's quite clear no matter who they're doing it for, they're cheating. It looks like a bank heist.**[48]

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[47] *Id*. at 1, 6-7.

[48] Rudy Giuliani's Common Sense, *Christmas Is Not Canceled, It's Vital This Year | Rudy Giuliani | Ep. 96*, Rumble (Mar. 22, 2021), https://perma.cc/T9VY-LPU7; Rudy Giuliani, *Christmas Is Not Canceled, It's Vital This Year | Rudy Giuliani | Ep. 96*, RudyGiulianics.com (Dec. 23, 2020), https://perma.cc/FY6G-EEJD.

67. Giuliani and others amplified these lies on social media. For example, One America News Network's ("OAN") social media post about the December 23 episode of *Common Sense* linked to an article from the OAN Newsroom.[49]

68. That episode remains available on Giuliani's website.[50]

***December 25, 2020, Episode of Giuliani's* Common Sense**

69. Two days later, on his Christmas Day episode of *Common Sense*, which had 1.3 million views on YouTube as of February 22, 2021,[51] Giuliani repeated the same defamatory claims and again identified Ms. Freeman by name:

> Live from Fulton County, let's watch the Democrats steal the election! And there you see it. **Ruby Freeman and her crew getting everybody out of the center, creating a false story** that there was a—that there was a water main break. No water main break. **They get everybody out. They wait, they wait, they wait. They check, they check, they check, like they're gonna do a heist, and all of a sudden the crooks sprang into action.** They go under a desk covered like a casket, and they start pulling ballots out. Tremendous numbers of ballots. And they bring them over to one counting stand, all the way over here, another counting stand, another—and they keep looking around to make sure there's nobody in the room! . . . Every once in a while, you look closely, you can them doing this—one ballot [gestures scanning a ballot multiple times]. You know what that does? That takes Biden and multiplies it by 5.
>
> . . .

[49] Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 23, 2020, 10:12 PM), https://perma.cc/KN77-B4W2?type=image; OAN, One America News Network, Facebook (Dec. 25, 2020),), https://perma.cc/K7CJ-MZ49. The link from OAN's Facebook page takes one to a page that has now been taken down. But an archived version of that page (with the same link) is available at: *Giuliani: New Developments in Election Fraud Case Coming Up*, OAN (Dec. 25, 2020), *available at* https://perma.cc/N5DT-YDU3?type=image (last visited Dec. 22, 2021).

[50] Rudy Giuliani, *Christmas Is Not Canceled, It's Vital This Year | Rudy Giuliani | Ep. 96*, RudyGiulianics.com (Dec. 23, 2020), https://perma.cc/FY6G-EEJD.

[51] Rudy W. Giuliani, *Who Will Be Our President? The Current State of Our Country | Rudy Giuliani | Ep. 97*, YouTube (Dec. 25, 2020), *available at* https://perma.cc/AY9K-3RP3?type=image (last visited Dec. 22, 2021).

> [J]ust look at the tape. That accounts for anywhere from 40 to 80,000 votes. The number then when we look at it on, was like 138,000 for Biden and 2,000 for Trump. Take those out of their numbers—Trump won Georgia honestly. We want honest votes here.[52]

70. That episode remains available on Giuliani's website, and he amplified it on social media.[53]

December 30, 2020, Rudy Giuliani Interview by OAN's Chanel Rion

71. On December 30, 2020, Defendant Giuliani promoted the lie in an interview by Chanel Rion, an OAN staffer based in Washington, D.C., and broadcast on OAN. In the segment, Ms. Rion asks Defendant Giuliani, "Talk about Georgia for a second. How important is Georgia right now?" With the Trump Edited Video depicting Ms. Freeman and Ms. Moss playing on screen as he spoke, Giuliani responded:

> There are five or six states that can make the difference here and that have the evidence already have the evidence that shows that the Biden people stole the election, and not only that, they have the evidence that shows that Trump actually had more votes. Georgia is maybe the easiest to demonstrate because it's on video. **During that videotape, that we can all see right in front of our eyes, we can see them stealing the votes. We can see them throwing out the people. We can see them counting it four and five times.** We also have the statistics during that period of time, **120,000 votes for Biden, couple hundred votes for Trump, no observers, makes it totally illegal.** That alone changes the election. That alone means that if you get rid of those illegal votes, Trump wins Georgia by 40 or 50 thousand votes. . . . Georgia has the one video tape, I consider it like the Zapruder film was to the Kennedy assassination, this film

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[52] *Id.*; Rudy Giuliani's Common Sense, *Who Will Be Our President? The Current State of Our Country | Rudy Giuliani | Ep. 97*, Rumble (Mar. 22, 2021), https://perma.cc/7FWT-6V3V.

[53] Rudy Giuliani, *Who Will Be Our President? The Current State of Our Country | Rudy Giuliani | Ep. 97*, RudyGiulianics.com (Dec. 25, 2020), https://perma.cc/8XLB-SS62; Rudy Giuliani, *Who Will Be Our President? The Current State of Our Country | Rudy Giuliani | Ep. 97*, RudyGiulianics.com (Dec. 25, 2020), available at https://perma.cc/7FWT-6V3V (last visited Dec. 22, 2021); Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 25, 2020, 3:47 PM), https://perma.cc/KU2W-XX9Y.

> will live for a hundred years. **For a hundred years, this film will show that the, the 2020 presidential election, there was an attempt to steal it.**[54]

72. Ms. Rion stated that it "seems that the Georgia legislators are very much on board with having looked at the evidence you and your team presented, having watched the videos, looked at the data, they're onboard, they want to do something about this. But we have an obstacle."[55] Defendant Giuliani responded:

> I've heard Democratic senators get on television and say it's espionage to say that it was fraud. You're not gonna tell me that. **I see, I can see the fraud, it's in front of my eyes. What am I supposed to do, close my eyes and make believe that in Fulton County, Georgia, when they closed the doors, and they got rid of the public, and they started triple counting ballots and it ends up being 120,000 for, for Biden and 3,000 for Trump? They weren't cheating?** Am I stupid?[56]

73. The video was promoted on OAN's Twitter account on the day it aired.[57] OAN's posts on its Facebook page from December 31, 2020, to January 3, 2021, also indicate that OAN re-broadcast Ms. Rion's interview with Giuliani in part or in full on January 2 and/or January 3, 2021.[58]

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[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] OAN (@OANN), Twitter (Dec. 30, 2020, 12:24 PM), https://perma.cc/9XET-RLFY?type=image.

[58] OAN, *One America News Network*, Facebook (Dec. 31, 2020, 12:50 PM), https://perma.cc/E65T-FNTM; OAN, *One America News Network*, Facebook (Dec. 31, 2020, 12:51 PM), https://perma.cc/DL65-JMZD; OAN, *One America News Network*, Facebook (Jan. 2, 2021, 8:49 AM), https://perma.cc/5B3U-5UTE; OAN, *One America News Network*, Facebook (Jan. 2, 2021, 9:16 PM), https://perma.cc/56G6-JFSS; OAN, *One America News Network*, Facebook (Jan. 3, 2021, 10:01 PM), https://perma.cc/9SKY-T25B.

***December 30, 2020, Episode of Giuliani's* Common Sense**

74. In his December 30, 2020, episode of *Common Sense*, Giuliani again reprised his lies about ballot counting in Fulton County on election night:

> [T]he Fulton County vote counting [videotape], which in and of itself **proves that Georgia was stolen by, uh, Joe Biden and by the Democrats. That one video proves it.**
>
> . . .
>
> **[T]he first thing that the election workers do . . . is they, um, move out the observers. . . . [T]hey make sure there's no one around, they make sure the doors are locked so nobody else can come in, and then at a certain point they look around again, and they go under a table covered by a black, like a black blanket, and they start pulling out ballots.** Now we begin with, why are ballots under a table? And then they start distributing those ballots for counting to three or four different areas where there are counting machines. And you can see it's done very hurriedly; it's done in a way suggesting that they are nervous about what they're doing, and by the way, even if these ballots were legitimate ballots, which I doubt they are, this would be entirely illegal. And every one of those ballots would be declared null and void because each one of these ballots is being counted in violation of the law of Georgia that in fact there must be the public present when ballots are being counted . . . . [I]t looks an awful lot like a bank heist, doesn't it?[59]

75. The video recording of the podcast episode then played the Trump Edited Video of Ms. Freeman and Ms. Moss as Defendant Giuliani narrated. He said: "[The videotape is] just this one piece of evidence. So don't tell me there wasn't fraud in this election. And don't tell me I can't use the word 'fraud' . . ."[60]

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[59] Rudy Giuliani's Common Sense, *I Can't Say This on National Television | Rudy Giuliani | Ep. 98*, Rumble (Mar. 22, 2021), https://perma.cc/2UX6-WRGY; Rudy Giuliani, *I Can't Say This on National Television | Rudy Giuliani | Ep. 98*, RudyGiulianics.com (Dec. 30, 2020), https://perma.cc/79AK-Y6QU.

[60] *Id*.

76. That episode, which Giuliani further disseminated on social media, remains available on Giuliani's website.[61]

January 2, 2021 Telephone Call Between Incumbent Candidate Trump and Georgia Secretary of State

77. On information and belief, Defendant Giuliani published defamatory claims about Plaintiffs directly to Donald Trump, members of the Trump campaign, and other individuals in Washington, D.C. prior to January 2, 2021.

78. On January 2, 2021, then-President Trump—acting in his personal capacity as a presidential candidate—held a call with Georgia Secretary of State Raffensperger, and others, in which Mr. Trump asked Secretary Raffensperger to "find 11,780 votes" to flip the Georgia result in his favor.

79. On information and belief, Mr. Trump was re-publishing comments made to him by Defendant Giuliani, and Defendant Giuliani encouraged Trump to make the call.

80. During that call, Mr. Trump used Ms. Freeman's name no less than 19 times, reiterating Defendant Giuliani's false claims about Plaintiffs.[62] For example, near the beginning of the call, Mr. Trump stated:

> **We had at least 18,000 that's on tape – we had them counted very painstakingly – 18,000 voters having to do with Ruby Freeman. She's a vote scammer, a professional vote scammer and hustler, Ruby Freeman.** That is – that was the tape that's been

[61] Rudy W. Giuliani (@RudyGiuliani), Twitter (Dec. 30, 2020, 6:02 PM), https://perma.cc/UYL8-3VTR; Rudy Giuliani, *I Can't Say This on National Television | Rudy Giuliani | Ep. 98*, RudyGiulianics.com (Dec. 30, 2020), https://perma.cc/79AK-Y6QU.

[62] *Trump's Georgia Call: Listen to the Audio and Read a Full Transcript*, Wall St. J. (Jan. 3, 2021), https://perma.cc/G7JW-AKQ8; *see also* Amy Gardner & Paulina Firozi, *Here's the full transcript and audio of the call between Trump and Raffensperger*, Wash. Post (Jan. 5, 2021), https://perma.cc/6S2T-8XTE (transcript of the same call not behind a paywall but with Ms. Freeman's name replaced with "[name]"); Allie Bice et al., *Trump's Pressure on Georgia Election Officials Raises Legal Questions*, Politico (Jan. 3, 2021), https://perma.cc/EBT9-32U2.

shown all over the world that makes everybody look bad – you, me, and everybody else – where they got – number one, they said – **they said very clearly and it's been reported that they said there was a major water main break.** Everybody fled the area. And then they came back – Ruby Freeman, her daughter, and a few people. There were no Republican poll watchers. Actually, there were no Democrat poll watchers. I guess they were them. But there were no Democrats, either. And there was no law enforcement. Late in the morning, they went – early in the morning, they went to the table with the black robe – the black shield and they pulled out the votes. **Those votes were put there a number of hours before. The table was put there – I think it was – Brad, you would know. It was probably eight hours or seven hours before, and then it was stuffed with votes.** They weren't in an official voter box. They were in what looked to be suitcases or trunks – suitcases, but they weren't in voter boxes. The minimum number it could be – because we watched it, and they watched it for certified in slow motion, instant replay if you can believe it. **But it had slow motion and it was magnified many times over, and the minimum it was was 18,000 ballots, all for Biden.**

81. Mr. Trump continued:

. . . we're so far ahead – **we're so far ahead of these numbers, even the phony ballots of Ruby Freeman – known scammer.** You know the internet? You know what was trending on the internet? "Where's Ruby," because they thought she would be in jail. "Where's Ruby." It's crazy. It's crazy. That was – the minimum number is 18,000 for Ruby, but they think it's probably about 56,000. **But the minimum number is 18,000 on the Ruby Freeman night where she ran back in there when everybody was gone and stuffed – she stuffed the ballot boxes. Let's face it, Brad. I mean, they did it in slow-motion replay magnified, right? She stuffed the ballot boxes. They were stuffed like nobody's ever seen them stuffed before.** So there's a term for it when it's a machine instead of a ballot box, but she stuffed the machines. **She stuffed the ballot – each ballot went three times. They were showing here's ballot number one, here it is a second, third time, next ballot.**

I mean, look. Brad. **We have a new tape that we're going to release. It's devastating.** And by the way, that one event, that one event is much more than the 11,000 votes that we're talking about. It's, you know, that one event was a disaster. And it's just, you know, but it was, it was something, it can't be disputed. And again, we have a version that you haven't seen, but it's magnified. It's

> magnified, and you can see everything. For some reason, they put it in three times, each ballot, and I don't know why. I don't know why three times. Why not five times, right? Go ahead.

82. In response, Secretary Raffensperger stated: "You're talking about the State Farm video. **And I think it's extremely unfortunate that Rudy Giuliani or his people, they sliced and diced that video and took it out of context**."[63]

83. Mr. Trump ignored Secretary Raffensperger and continued to claim there was election fraud in Georgia, including to again accuse Ms. Freeman of wrongdoing. Secretary Raffensperger again refuted the accuracy of what President Trump (and previously Defendant Giuliani) claimed the Trump Edited Video showed:

> Mr. Trump: And remember, her reputation is – she's known all over the internet, Brad. She's known all over. I'm telling you, "Where's Ruby" was one of the hot items – Ruby, they knew her. "Where's Ruby." So, Brad, you know, there can be no justification for that. And, you know, I give everybody the benefit of the doubt, but that was – and, Brad, why did they put the votes in three times? **You know, they put them in three times.**
>
> Raffensperger**:** Mr. President, they did not put that. **We did an audit of that, and we proved conclusively that they were not scanned three times.**
>
> Mr. Trump**:** Where was everybody else at that late time in the morning? Where was everybody? Where were the Republicans? Where were the security guards? Were the people that were there just a little while before when everyone ran out of the room. How come we had no security in the room. Why did they run to the bottom of the table? Why do they run there and just open the skirt and rip out the votes. I mean, Brad. And they were sitting there, I think for five hours or something like that, the votes.
>
> Raffensperger**:** Mr. President, we'll send you the link from WSB.
>
> Mr. Trump**:** I don't care about the link. I don't need it. Brad, I have a much better —

[63] *See* WSJ Staff, *Trump's Georgia Call: Listen to the Audio and Read a Full Transcript*, Wall St. J. (Jan. 3, 2021), https://perma.cc/G7JW-AKQ8.

84. During the call, Ryan Germany, lawyer for Georgia secretary of state's office, also told Mr. Trump the statements about Plaintiffs were inaccurate:

> Mr. Trump: **And the minimum – there were 18,000 ballots but they used them three times. So that's, you know, a lot of votes. And that one event – and they were all to Biden, by the way; that's the other thing we didn't say. You know, Ruby Freeman, one thing I forgot to say which was the most important. Do you know that every single ballot she did went to Biden? You know that, right? Do you know that, by the way, Brad? Every single ballot that she did through the machines at early – early in the morning went to Biden. Did you know that, Ryan?**
>
> Germany: That's not accurate, Mr. President.
>
> Mr. Trump: Huh. What is accurate?
>
> Germany: The numbers that we are showing are accurate. We picked – we picked –
>
> Mr. Trump: No. No. About Ruby Freeman. About early in the morning, Ryan, when the woman took – you know, when the whole gang took the stuff out of the – from under the table, right, do you know that – do you know who those ballots – do you know who they were made out to? Do you know who they were voting for?
>
> Germany: No, not specifically.
>
> Mr. Trump: Did you ever check?
>
> Germany: We did what I described to you earlier.
>
> Mr. Trump: No, no, no. Did you ever check the ballots that were scammed by Ruby Freeman, known – a known political operative, ballotteer? Did you ever check who those votes were for?
>
> Germany: We've looked into that situation that you described –
>
> Mr. Trump: **No, they were 100 percent for Biden. One hundred percent. There wasn't a Trump vote in the whole group.** Why don't you want to find this, Ryan? What's wrong with you? I heard – I heard your lawyer is very difficult, actually, but I'm sure you're a good lawyer. You have a nice last name.

> But I'm just curious, why wouldn't – why do you keep fighting this thing? It just doesn't make sense. We're way over the 17,779, right. **We're way over that number, and just if you took just Ruby Freeman we're over that number by five or six times when you multiply it out times three, and every single ballot went to Biden.** And you didn't know that but now you know it.[64]

85. Major news outlets, including *The Washington Post*, *The Wall Street Journal*, and *The New York Times* published audio recordings and transcripts of the call.[65]

86. Some outlets, including *The Wall Street Journal* and *The Gateway Pundit*, also published the audio recording and transcript but without redacting Ms. Freeman's name.[66]

January 6, 2021, Insurrection

87. Ahead of January 6, 2021, Defendant Giuliani led the Trump Campaign's "war room," which was located at the Willard Hotel in Washington, D.C.[67]

88. On January 6, 2021, Defendant Giuliani joined Mr. Trump for a campaign rally, during which Mr. Trump repeated the lies about Plaintiffs that Defendant Giuliani began publishing the month prior, including:

> In Fulton County, Republican poll watchers were ejected, in some cases, physically from the room under the false pretense of a pipe

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[64] *See* WSJ Staff, *Trump's Georgia Call: Listen to the Audio and Read a Full Transcript*, Wall St. J. (Jan. 3, 2021), https://perma.cc/G7JW-AKQ8.

[65] Amy Gardner & Paulina Firozi, *Here's The Full Transcript and Audio of the Call Between Trump and Raffensperger*, Wash. Post (Jan. 5, 2021), https://perma.cc/6S2T-8XTE; WSJ Staff, *Trump's Georgia Call: Listen to the Audio and Read a Full Transcript*, Wall St. J. (Jan. 3, 2021), https://perma.cc/G7JW-AKQ8; *Transcript: President Trump's Phone Call With Georgia Election Officials*, N.Y. Times (Jan. 3, 2021), https://perma.cc/G7JW-AKQ8.

[66] WSJ Staff, *Trump's Georgia Call: Listen to the Audio and Read a Full Transcript*, Wall St. J. (Jan. 3, 2021), https://perma.cc/G7JW-AKQ8; Jim Hoft, *HUGE: TRUMP DROPS A BOMB DURING PHONE CALL! Tells Raffensperger 'Vote Scammer and Hustler' Ruby Freeman Was Behind Alleged 18,000 FRAUDULENT VOTES in Suitcase Scandal! (VIDEO)*, Gateway Pundit (Jan. 3, 2021, 6:20 PM), https://perma.cc/8QKG-FFEN?type=image.

[67] Jacqueline Alemany et al., *Ahead of Jan. 6, Willard Hotel in Downtown D.C. Was a Trump Team 'Command Center' for Effort to Deny Biden the Presidency*, Wash. Post (Oct. 23, 2021), https://perma.cc/LHG4-TDSD.

> burst. Water main burst, everybody leave. Which we now know was a total lie.
>
> Then election officials pull boxes, Democrats, and suitcases of ballots out from under a table. You all saw it on television, totally fraudulent. And illegally scanned them for nearly two hours, totally unsupervised. Tens of thousands of votes. This act coincided with a mysterious vote dump of up to 100,000 votes for Joe Biden, almost none for Trump. Oh, that sounds fair. That was at 1:34 AM.[68]

***January 18, 2021, Episode of OAN's* In Focus with Stephanie Hamill**

89. On the January 18, 2021 OAN's program *In Focus with Stephanie Hamill* , Giuliani repeated the false claims that Ms. Freeman and Ms. Moss were part of an election fraud scheme:

> I mean, they pretty much censored it while it was going on, so they would love to turn the page on it. I mean, **I get banned from any of the big tech things when I say that not only was there voter fraud, I have evidence of it, I've seen it, I have a motion picture of it. I can show you the voter fraud in living color. It was done in Fulton County, Georgia, it was well over 30,000 ballots were stolen. They were attributed to Biden instead of Trump.** Had they been caught and held to account for it, Trump would have won Georgia.[69]

***June 14, 2021, Episode of OAN's* The Real Story with Natalie Harp**

90. On or about June 14, 2021, Defendant appeared on OAN's *The Real Story with Natalie Harp* during an edition dedicated to discussing "every red state that went blue, due to election-changing amounts of fraud."[70] During that interview, Defendant Giuliani stated:

> **But for sure there was fraud, you can't say there wasn't fraud. . . . The law of Georgia is that the ballots have to be counted in**

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[68] Brian Naylor, *Read Trump's Jan. 6 Speech, a Key Part of Impeachment Trial*, NPR (Feb. 10, 2021), https://perma.cc/ECA7-UE86; Allison Durkee, *Giuliani Claims His Call for 'Trial By Combat' on Jan. 6 Shouldn't Have Been Taken Literally as Legal Woes Mount*, Forbes (May 18, 2021), https://perma.cc/NS8N-XYJT.

[69] *See* OAN, *1/18/2021 - Rudy Giuliani, Rep. Marjorie Taylor Greene, Brandon Tatum, Anna Paulina Luna & Peter Roff*, Spotify (Jan. 19, 2021), https://perma.cc/HZ6F-WQ5Z.

[70] OAN, *The Real Story - OAN Uncovering the Crime of the Century with Rudy Giuliani*, Rumble (June 14, 2021), https://perma.cc/6KZB-EBT3.

public. They deliberately threw people out and counted the ballots in private, and there's videotape of it. That wasn't enough. I don't know what you've got to do to prove it. **They committed the crimes on video. You can see them do it. They lied about it. Then you can see these same people handing off flash drives to each other.**

91. The interview continues with the following exchange:

Harp: There's so much to talk about. Georgia, especially, because, Georgia, we saw the tapes. We knew what was going on, based on the ballot drops that were happening in other states. But in Georgia, we all saw those suitcases being wheeled out from under the tables. We hear about the water leak. "There was a leak." How much do you see that as the defining moment because President Trump was still winning Georgia Tuesday, Wednesday, Thursday—it wasn't 'til Friday that then they found enough votes that Biden won?

Giuliani: Well, **I think Georgia is, uh, in terms of proof, the clearest proof.** In terms of scope of fraud, Pennsylvania is probably the biggest, **but, uh, in terms of proof, Georgia has every kind of proof you could possibly imagine**. I mean, the explanation for that videotape is absurd because you can see them—**you can see them throw the people out. And the law specifically says you can't count in private, so they threw the people out. They used this phony excuse that there was going to be some kind of a water main break. It was not. There was no water main break, and then after the people were out—and you can just watch the way they're doing it. I mean, I've watched bank robberies. I mean, this, this looked like a bank robbery. They were doing it surreptitiously. And, uh, handing 'em off, and doing it quickly, and occasionally you can see them multiple count a vote. Now you take the two women who ran that, there are other tapes of them earlier in the day, handing off—handing off small, hard drives and flash drives, those flash drives were used to put in the machines—the machines that supposedly weren't, uh, accessible by internet, all of which were accessible by internet. So these women have gotten away scot-free.** No one's even questioned them. I mean, you have to look at that videotape and say, at least there should be an investigation, and they should

> be put under oath as to what they were doing. . . . Republicans, Democrats, reporters, and everyone else. **You see them unceremoniously ushered out. And then you see the woman check out the whole place to make sure there's nobody there and that's when they get the ballots from under the table, and that's when they start counting the ballots under the table.**[71]

92. While the Trump Edited Video of Ms. Freeman and Ms. Moss played, the interview continued:

> Harp: We're running the footage right now, Mr. Mayor, as you're talking, we're running the footage right next to you so everybody can see what's going on. Take a look at that footage because it's not being played anywhere else.
>
> Giuliani: Yeah. And now all that was dismissed without a single person being questioned by law enforcement. Without a single person having to go under oath. So they allege the phony secretary of state and they all like, well, there were people around somewhere. Well, I don't see them. Why don't you produce them and put them under oath? Why doesn't the D.A. open an investigation, except for the fact that the D.A. is in a crooked Democratic county? **Another thing your listeners should understand, Natalie, is they did this in crooked Democratic cities. Not everywhere. This was a very, very well planned, executed, fraud.**

93. That video was promoted on social media, and remains available on OAN's channels today. [72]

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[71] *Id*.

[72] OAN (@OANN), Twitter (June 15, 2021, 11:37 AM), https://perma.cc/TGC3-LKLD; Natalie Harp (@nataliejharp), Twitter (June 15, 2021, 12:50 PM), https://perma.cc/J9VP-WTHQ?type=image.

***July 23, 2021, Episode of* The Real Story with Natalie Harp**

94. On or about July 23, 2021, Defendant Giuliani appeared on OAN's *The Real Story with Natalie Harp*. OAN host Natalie Harp asked Giuliani for his reaction to the late former U.S. Senator Bob Dole's statement that, with respect to alleged election fraud during the 2020 presidential election, "there's nothing to see here." With the chyron "The Real Story on the 2020 Presidential Election Scam" displayed, Defendant Giuliani claimed that there were people "pushed away, and all of a sudden these ballots were brought in, and they all were Biden."[73] He continued:

> Giuliani: **How about the videotape that I have where they're shoving the thing into the machine three and four times so they can be recounted by the same two women that earlier in the day were passing around hard drives or flash drives that supposedly can't be used in Dominion machines, but can.**
>
> Harp: Right. We have this proof.
>
> Giuliani: I know we've lost the spin war, but we haven't lost the truth war. **I have the truth.**

95. That video was circulated on social media and remains available on OAN's channels today.[74]

***December 10, 2021, Episode of OAN's* The Real Story with Natalie Harp**

96. On December 10, 2021, Defendant Giuliani again promoted lies about Plaintiffs on OAN's *The Real Story with Natalie Harp*. In that interview, Giuliani said:

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[73] OAN, *The Real Story - OAN Ballots in Suitcases with Phill Kline*, Rumble (June 21, 2021), https://perma.cc/9PWJ-2CRW.

[74] OAN, *The Real Story–OAN Exposing Disinformation with Rudy Giuliani*, Rumble (July 23, 2021), https://perma.cc/EC3V-TGDH; OAN, *The Real Story–Exposing Disinformation with Rudy Giuliani*, OAN (July 28, 2021), https://perma.cc/H6YP-K4MG?type=image; Natalie Harp, *The Real Story with Natalie Harp*, Facebook (July 23, 2021), https://perma.cc/888E-ND4Q; Natalie Harp (@nataliejharp), Twitter (July 24, 2021, 3:29 PM), https://perma.cc/7PY9-ZBU6?type=image.

> The situation in Georgia, uh, **that videotape is about as clear evidence of stealing votes as I've ever seen**. And it was mischaracterized by the Secretary of State, the crooked Governor Kemp, uh, the Democrats—I mean, they're all in league together. . . . In any event, **you've got a tape in, in, in Georgia that's crystal clear, it looks like a, it looks like a bank robbery, my goodness**. And, uh this [Pennsylvania tape] is very, very clear. There are about ten others. **There's no doubt that people stole votes in that election for Biden, and the numbers are—I would say—way beyond what was necessary to switch the vote in about four states.** But they certainly are extremely significant and can't be ignored. **When people cheat in elections on some kind of substantial scale**, how do you know in advance without investigating whether it affects the election or not? Right?

97. That video remains available on OAN's channels today.[75]

January 12, 2022, Episode of Giuliani's Common Sense

98. On January 12, 2022—nearly three weeks *after* Plaintiffs filed this lawsuit—Defendant Giuliani hosted John Solomon on his video podcast to discuss "fraud" in Georgia during the 2020 election.[76] Mr. Solomon is a former conservative opinion contributor for various outlets, including *The Washington Times* and *Fox News*, who Mr. Giuliani described as "one of the best investigative reporters" with whom he has ever dealt.

99. During the January 12, 2022 conversation, Giuliani continued to push lies about the Trump Edited Video, even as Solomon attempted to explain to Giuliani that there was no truth to claims that the ballots were fraudulent:

> Giuliani: So can you take us back to take us back to to uh uh Atlanta for a moment.

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[75] OAN, *The Real Story - OAN Pennsylvania Shenanigans with Rudy Giuliani*, Rumble (Dec. 11, 2021), https://perma.cc/NJE9-BYGY.

[76] Rudy Giuliani's Common Sense, *Listen to What John Solomon Found Out about the Presidential Election!* | Rudy Giuliani | Ep. 204, Rumble (Jan. 12, 2022), https://perma.cc/9HRD-2SGN.

Solomon: Sure.

Giuliani: **So you remember, remember the, the very famous video of the whole day of the, there was a, uh, the arena had a, had a, had a security camera that was unknown to the participants. So several days, if not weeks, after the election the, the, uh, company came forward with tapes of this very suspicious activity where the people were thrown out of the arena, the observers.** All the doors were locked—

Solomon: That should never have been done.

Giuliani: All the doors were locked. **They then for about 15 minutes cased the place and made sure everyone was gone. Then they opened up this big blanket and under all the whole, all these ballots and then with no one observing in violation of the law they very seriously tried to count all these votes.** Now is there any, any further evidence— now they, they have said of course that that tape was doctored, done by Russians, uh, that I doctored— I actually haven't touched it so— it was given to me.

Solomon: So I dug into that a lot. So first off there are two parts to this. One is the expulsion of the vote observers. That is, that was an awful—

Giuliani: Well you can't challenge that. It's very important.

Solomon: It should never have happened. Uh, they should never have jettisoned, uh, those observers. You're not supposed to count without, uh, bipartisan observers. So that act clearly happened. It was improper. People have said that was an improper act and there was some vote counting that occurred after. Now the famous video tape where the video, uh, the ballots come out from underneath the table, those were actual real ballots, most of them, I'm told from the reporting I did. They were military absentee ballots. They had been processed earlier in the day—put in the suitcase. Probably a bad idea to put it under a table, again not a secure way of holding and transporting ballots. That's one of the things that Brad Raffensperger's guy said. **But the actual ballots in that box—I've interviewed multiple people**

> **including people who worked in the FBI, the GBI. Those ballots turned out to be real ballots, lawful ballots. They weren't fake ballots. Most of them were military absentee ballots, as has been described to me. But those were real ballots that were counted. They shouldn't have been stored under a table. They should have been in a secure location until the moment and they shouldn't have been counted until observers were there. But the fact—I don't think those—my reporting indicates those were real ballots, not fraudulent ballots, just ballots that were mishandled** and that's one of the reasons now why the Sec—uh, the State Elections Board in Georgia wants to take over Fulton County: they want to stop those shenanigans.[77]

100. After Mr. Solomon told Defendant Giuliani that the "ballots were processed the proper way" based on statements of the state election clerks, Defendant Giuliani said that "we are trying to rely on, relying on people who have lied in the past" and continued to claim that the ballots were "hidden" and that "it looks like ballots were thrown away during that process and it also looks like ballots were counted three or four times."[78]

101. That episode remains available on Defendant Giuliani's channels today.[79]

DEFENDANT GIULIANI PUBLISHED HIS STATEMENTS ABOUT PLAINTIFFS WITH KNOWLEDGE OF OR RECKLESS DISREGARD FOR THEIR FALSITY.

102. Defendant Giuliani knew that his statements about Ms. Freeman and Ms. Moss were not true or published them with reckless disregard for their truth.

103. Defendant Giuliani learned of or recklessly disregarded the authoritative and immediate fact-checks, described above and incorporated herein, of his lies in real time, including before he published any of the Actionable Statements.

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[77] *Id.*
[78] *Id.*
[79] *Id.*

104. Before publishing any of the Actionable Statements, Defendant was aware of the numerous statements by Georgia and federal officials disproving the portrayal of misconduct that had been advanced by the Trump Campaign, and he also knew and knows that multiple fact-checking organizations have confirmed the facts as presented by the Georgia and federal officials.

105. No later than December 8, 2020, Defendant Giuliani was specifically aware of the affidavit filed by the chief investigator for the Georgia Secretary of State refuting his lies.

106. Defendant Giuliani learned of additional refutations and evidence refuting his lies about Plaintiffs.

107. On January 4, 2021, Georgia election officials held yet another press conference to refute the already-debunked election fraud allegations that President Trump raised in his January 2, 2021, call with Secretary Raffensperger.[80] Mr. Sterling once again described the events that occurred on Election Day at State Farm Arena, explained how they represented entirely normal ballot processing, and directed listeners to the Georgia Secretary of State's website for a detailed timeline matched to the surveillance footage.[81] Mr. Sterling reiterated for the assembled reporters the actual series of events:

> Late in the evening, after the water main break had been fixed, election workers prepared to go home for the night and followed standard procedures to store ballots securely: placing them in containers and affixing numbered seals. But when Mr. Raffensperger found out that they were closing up shop, he ordered them to continue counting through the night—so the workers retrieved the containers and resumed counting ballots.[82]

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[80] 11Alive, *Georgia Senate Runoffs | Secretary of State's Office Addresses Election Day, Claims*, YouTube (Jan. 4, 2021), https://perma.cc/A7PQ-YBDY?type=image.

[81] *Fact Check*, Secure the Vote, https://perma.cc/22F2-8MQU?type=image (last accessed Nov. 7, 2021).

[82] Maggie Astor, *A Georgia Election Official Debunked Trump's Claims of Voter Fraud, Point by Point*, N.Y. Times (Jan. 4, 2021), https://perma.cc/5F4K-LADG.

108. Mr. Sterling expressed his great frustration that the Defendant Giuliani, among others, "had the entire tape" revealing these facts, and nevertheless "intentionally misled the State Senate, the voters and the people of the United States about this."[83]

109. PolitiFact published a fact-check article about the Raffensperger call that same day, finding that the events described by Mr. Sterling lined up with previous reports from PolitiFact and other fact-checkers. This article repeated PolitiFact's earlier assessment that the arena surveillance video showed no wrongdoing and provided no evidence of election fraud. It rated former President Trump's claim that Georgia election workers pulled 18,000 ballots from suitcases and counted them for President Biden as "Pants on Fire!" false.[84]

110. On January 7, 2021, the fact-checking website Lead Stories debunked the claims that the same ballots were tabulated multiple times. The article quotes Richard Barron, Fulton County Registration and Elections Director, who said, "She did not accept the ballots she had run, (but) instead re-ran them before accepting the batch. It (is) no different than with paper jams in a copier and you have to pull it out and rerun it."[85]

111. On January 12, 2021, Carter Jones—who was appointed by the Office of the Georgia Secretary of State to serve as an independent election monitor as part of a consent agreement between the state and Fulton County—submitted his official report about the 2020 general election to the state election board. Mr. Jones was present at State Farm Arena on election

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[83] *Id*.

[84] Bill McCarthy, *Trump Rehashes Debunked Claim About 'Suitcases' of Ballots in Georgia Phone Call*, PolitiFact (Jan. 4, 2021), https://perma.cc/W996-EH9G.

[85] Hallie Golden, *Fact Check: Video From Georgia Does NOT Show Election Official Improperly Scanning The Same Ballots Multiple Times*, Lead Stories (Jan. 7, 2021), https://leadstories.com/hoax-alert/2021/01/video-from-georgia-does-not-show-election-official-improperly-scanning-the-same-ballots-multiple-times.html?fbclid=IwAR3WCa-B0VKqOAlxYz9huNdtctwx8KxGGJBz7q10NW31b-Y-2F2ezT1s-Vc.

night[86]; in his report, he denied observing any double-counting of ballots or other election-worker malfeasance in Fulton County:

> From October to January, I spent nearly 270 hours at various locations observing every aspect of Fulton County's election processes. At no time did I ever observe any conduct by Fulton County election officials that involved dishonesty, fraud, or intentional malfeasance. During my weeks of monitoring, I witnessed neither "ballot stuffing" nor "double-counting" nor any other fraudulent conduct that would undermine the validity, fairness, and accuracy of the results published and certified by Fulton County.[87]

112. Even when directly rebutted on his own podcast, Defendant Giuliani refused to stop lying about Plaintiffs. Defendant continued to consciously avoid the truth and had no credible basis for the false allegations he continued to make.

113. In his June 14, 2021, interview on OAN's *The Real Story with Natalie Harp*, Defendant Giuliani stated that he knew what he was saying on OAN, he "couldn't say on any, any network television in America" and that *The Wall Street Journal* would not print his comments about election fraud.[88]

114. On June 24, 2021, a New York appellate court stripped Giuliani of his law license. *In re Giuliani*, 197 A.D.3d 1, 146 N.Y.S.3d 266 (1st Dep't 2021). Among the bases for that decision was the Court's finding that Giuliani knowingly spread the lies about Plaintiffs at issue here.

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[86] John Solomon and Daniel Payne, *Georgia Investigator's Notes Reveal 'Massive' Election Integrity Problems in Atlanta*, Just the News (June 19, 2021), https://justthenews.com/politics-policy/elections/ga-investigators-election-day-notes-reveal-chaotic-unsecured-ballot.

[87] *State Election Board Report – Post-Election Executive Summary*, Seven Hills Strategies (Jan. 12, 2021), https://perma.cc/7U3Z-DX2J.

[88] OAN, *The Real Story - OAN Uncovering the Crime of the Century with Rudy Giuliani*, Rumble (June 14, 2021), https://perma.cc/6KZB-EBT3.

115. In its decision, the Supreme Court of the State of New York, Appellate Division, First Judicial Department discussed Giuliani's representations that the Trump Edited Video "depicted Georgia election officials engaging in the illegal counting of mail-in-ballots." The Court explained:

> The gist of his claim was that illegal ballots were being surreptitiously retrieved from suitcases hidden under a table and then tabulated. In fact, the entirety of the videos shows the "disputed" ballots were among those in a room filled with people, including election monitors, until about 10:00 pm. At about 10:00 p.m., the boxes – not suitcases – containing the ballots were placed under a table in preparation for the poll watchers to leave for the evening. Those boxes were reopened and their contents retrieved and scanned when the state official monitor intervened, instructing the workers that they should remain to tabulate the votes until 10:30 p.m. that evening. **When viewed in full context and not as snippets, the videos do not show secreting and counting of illegal ballots. Based upon the claim, however, the Georgia Secretary of State conducted an investigation. The video tapes were viewed in their entirety by the Secretary's office, law enforcement, and fact checkers who, according to Secretary of State Brad Raffensperger, all concluded that there was no improper activity.**
>
> Respondent's argument with respect to the video is that a reasonable observer could conclude that there was an illegal counting of the mail-in ballots. **If, as respondent claims, he reviewed the entire video, he could not have reasonably reached a conclusion that illegal votes were being counted. We disagree that the video can be viewed as evidence of illegal conduct during the vote tabulation process or that it provided a reasonable basis for respondent's conclusions.**

116. The Court summarized that Defendant Giuliani "showed the snippets of video and/or made false statements regarding its content on at least the following occasions: the podcast *Rudy Giuliani's Common Sense* on December 4, 2020, the radio show *Uncovering the Truth* on December 6, 2020 and then again on the same radio show on December 27, 2020 and January 3, 2021; on December 3, 2020 at a hearing before the Georgia State Legislature; and yet again on

December 8, 2020 and December 10, 2020 on respondent's Chat with the Mayor radio program, and on December 19, 2020, and January 5, 2021 as a guest on the *War Room* podcast."

117. The Court concluded that Giuliani violated New York Rule of Professional Conduct 4.1, which prohibits "knowingly mak[ing] a false statement of fact or law to a third person," and Rule 8.4(c), which prohibits "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation."

118. On information and belief, Defendant learned of the decision immediately.

119. On October 12, 2021, the Georgia Secretary of State submitted a court-ordered statement about the investigations by the Secretary and the Georgia Bureau of Investigation into alleged fraudulent or counterfeit absentee ballots in the 2020 general election in Fulton County. The same day, the *Atlanta Journal-Constitution* published the full statement.[89] Secretary Raffensperger addressed the allegations about counting ballots multiple times:

> Witnesses told investigators that the ballot scanners were frequently jamming, requiring them to make multiple attempts to clearly scan all of the ballots in each batch. In order to tabulate the ballots, the scanners must first get a clear scan of the entire batch of ballots. Scanning is simply one step in the tabulation process. Once a batch of ballots is scanned clearly and free of errors, the elections worker has to click on a separate button on a computer monitor in order to tabulate the ballots. Investigators reviewed the activity logs for the scanners to corroborate the statements of the witnesses, and the paper jams reported by witnesses and shown in the video footage were confirmed by the scanner activity logs. Based upon this evidence, investigators found no evidence of wrongdoing.[90]

120. Secretary Raffensperger's statement incorporated as Exhibit A portions of the transcript of the May 5, 2021 deposition of James Callaway, the Deputy Chief Investigator in the

[89] Mark Niesse, *No Counterfeit Ballots Found by Georgia Election Investigators*, The Atla. J.-Const. (Oct. 12, 2021), https://perma.cc/ZGH6-7NHK/.

[90] McGovern Resp. at 6–7, *Favorito v. Wan*, No. 2020-cv-343938 (Ga. Super. Ct. Oct. 12, 2021), *available at* https://perma.cc/PYU3-G5K4.

Office of the Secretary of State, in *Jeffords v. Fulton County*, No. 2020-cv-343938 (Ga. Super. Ct. May 5, 2021). In his deposition, Mr. Callaway explained how he determined that Plaintiffs *did not* illegally count ballots multiple times:

> Q. Okay. So you see Ms. Ruby takes them off the scanner after scanning them?
>
> A. Uh-huh. (indicating in the affirmative) They're not tabulated.
>
> Q. Huh?
>
> A. They're not tabulated.
>
> Q. What are they doing there?
>
> A. Jammed up. You have to push a button on here to accept it, and she never did that. That's what I was watching.
>
> Q. Okay. You see she's—
>
> A. That, she's loading it. It jams up. She never pushes accept. She reloads them and does it again.
>
> Q. Okay. So she's putting them back on again?
>
> A. …[W]hen they're scanning like that, it's not record—it's not tabulating. It doesn't tabulate until you get your batch down correctly. You know, you could scan 25 different times, and you're not tabulating until you hit the "accept" button.[91]

121. In an effort to attempt to mitigate the harm caused by the publication of the false statements in Defendant's stories, Plaintiffs sent Defendant Giuliani a letter on December 16, 2021, demanding that he retract and take down the numerous defamatory statements he has published and continue to publish about Ms. Freeman and Ms. Moss.

[91] *See* McGovern Resp. Ex. A at 30–31, 34, *Favorito v. Wan*, No. 2020-cv-343938 (Ga. Super. Ct. Oct. 12, 2021), *available at* https://perma.cc/PYU3-G5K4.

122. Defendant has not responded to that letter, and still has not retracted any of his statements about Plaintiffs.

123. As described above, on January 12, 2022, Mr. Solomon informed Giuliani during an interview on Giuliani's podcast that the ballots stored under the table that appear in the Trump Edited Video were not fraudulent.

124. On March 8, 2022, Trump's former Attorney General William Barr published an account of his time in office. It included a passage explaining how the Department of Justice had looked into and found no evidence to support the false allegations against Ms. Freeman and Ms. Moss—"that video footage from Fulton County, Georgia, showed a box of bogus ballots being insinuated into the vote count while poll watchers were absent"—by December 2020.[92]

125. Mr. Barr explained:

> Throughout the rest of November and into December, the relevant US attorneys' offices, with the FBI's assistance, worked diligently to assess the major fraud claims. In Atlanta, our able US attorney B. J. Pak—coordinating with the Georgia Bureau of Investigation, which was conducting its own investigation—assessed the claim that illegal votes had been insinuated into the vote count in the absence of poll watchers. All the video evidence was reviewed, and numerous interviews were conducted. He, along with all the others investigating the matter, found no evidence of fraud. Contrary to allegations, the evidence showed that the ballots counted during the relevant period were legal ballots and were not double counted, as had been alleged.[93]

126. On information and belief, Defendant Giuliani learned of this book in real time.

127. Even after former AG Barr confirmed there was no evidence to support his claims about the Plaintiffs, Defendant Giuliani did not retract his false claims.

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[92] William Barr, *One Damn Thing After Another: Memoirs of an Attorney General* 541 (2022); *see id.* at 3, 541–42.

[93] *Id.* at 542.

128. On information and belief, at no point in publishing his false statements about Ms. Freeman and Ms. Moss did Defendant Giuliani attempt to contact Plaintiffs to obtain their account of the events being reported. Nor did Defendant Giuliani contact for corroboration other obvious available sources, and he specifically avoided contacting sources who had evidence to disprove their lies.

129. Defendant Giuliani ignored the truth, and continues to ignore it, because he had decided in advance to disseminate a false narrative about election fraud that would continue to benefit his preferred candidate, Donald Trump.

130. Defendant also advanced this predetermined fictitious storyline in the face of the facts because he believed it to be personally advantageous to do so. He was motivated to publish lies about Plaintiffs because lying about the election results was more profitable than reporting the truth.

131. Defendant consciously avoided the truth in order to increase his profile and to profit from the repeated publication of scandalous material. Defendant's publications about voter fraud throughout the 2020 election cycle increased his media reach and engagement. His broadcasts about voter fraud, in particular, performed well, and, on information and belief, he earned increased advertising revenue by publishing and republishing such well-performing falsehoods about Plaintiffs.

132. Defendant additionally hoped that repeating his preconceived narrative would have the effect of overturning the outcome of the presidential election. In particular, Defendant directed his media appearances to state and federal legislators within and without the District of Columbia, as well as their constituents, and to state and federal officials within and without the District with the goal of pressuring those legislators and officials to act unlawfully to refuse to certify electors

for President-elect Biden, de-certify electors for President-elect Biden, unlawfully certify electors for Trump, recognize only those electors for Trump, and/or to refuse to recognize electors for President-elect Biden.

133. Defendant's lies about Plaintiffs were inherently improbable from the start and became far more so over time, as no evidence ever emerged to support his claims and all of the evidence that did emerge proved those claims false.

DEFENDANT GIULIANI CAUSED PLAINTIFFS SUBSTANTIAL HARM WITH HIS FALSE STATEMENTS ABOUT MS. FREEMAN AND MS. MOSS THAT CONSTITUTE DEFAMATION *PER SE*.

134. Defendant Giuliani's defamatory campaign published or caused the publication of statements that assert and/or imply that, among other things, (i) Ms. Freeman and Ms. Moss engaged in a criminal conspiracy, along with others, to illegally exclude observers during the counting of ballots "under false pretenses" so that they could engage in election fraud; (ii) Ms. Freeman and Ms. Moss criminally and/or fraudulently introduced "suitcases" of illegal ballots into the ballot-counting process; (iii) Ms. Freeman and Ms. Moss fraudulently counted the same ballots multiple times; (iv) Ms. Freeman and Ms. Moss were involved in surreptitiously passing around flash drives that were not supposed to be placed in Dominion voting machines; and (v) that Ms. Freeman and Ms. Moss committed crimes and other fraud.

135. These claims are false and constitute defamation *per se*.

136. Defendant Giuliani is directly responsible for the reputational harm that Ms. Freeman and Ms. Moss experienced. Defendant Giuliani launched and executed a Strategic Plan that specifically included naming Ms. Freeman and Ms. Moss and widely disseminating statements accusing them of committing crimes.

137. Defendant Giuliani's statements, and those published as a result of his Strategic Plan, reached millions of people. For example, he was a frequent guest on OAN, which claimed to have had 35 million subscribers and that its total viewers at any given time could range from "about 150,000 to upwards of half a million."[94]

138. On December 1, 2020—before Defendant began to defame Ms. Freeman and Ms. Moss—Georgia Voting Implementation Manager Sterling had made clear what he believed were the likely consequences of the continued attacks on Georgia's election system. "Someone's going to get hurt, someone's going to get shot, someone's going to get killed," he had stated in a news conference.[95]

139. Defendant Giuliani pressed forward in spite of that and other warnings and, in doing so, directly contributed to Ms. Freeman and Ms. Moss receiving—almost immediately—an onslaught of extremely violent and graphic threats and dangerous harassment.

A. Defendant's Conduct Has Harmed Ms. Freeman.

140. Ms. Freeman sought intervention from the local police; a local officer answered more than 20 harassing calls on Ms. Freeman's cell phone. Despite these efforts, Ms. Freeman was ultimately forced to change her phone number and email address.

141. On multiple occasions, strangers camped out at Ms. Freeman's home and/or knocked on her door. When Ms. Freeman was not home or would not answer the door, these strangers would sometimes also harass her neighbors. Strangers were coming to her home so frequently that the local police agreed to add her address to their patrols of the area.

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[94] David Smith, *Trump Has a New Favourite News Network – and It's More Rightwing than Fox*, Guardian (June 15, 2019), https://perma.cc/SV32-AYU2?type=image.

[95] Stephen Fowler, *'Someone's Going To Get Killed': Ga. Official Blasts GOP Silence On Election Threats*, NPR (Dec. 1, 2020), https://perma.cc/73W2-P967.

142. During this time, multiple pizza deliveries showed up at her home that she and her family had never ordered. This is an often-chronicled result of being "doxxed"—the term for when strangers post and share a target's personal information as a means to organize a coordinated harassment campaign.

143. Christmas cards were mailed to Ms. Freeman's address with messages like, "Ruby please report to the FBI and tell them you committed voter fraud. If not you will be sorry," and "You deserve to go to jail, you worthless piece of shit whore."

144. The level of harassment Ms. Freeman received at her home led the FBI to conclude that she would not be safe in her home beginning on January 6, 2021, the date of former President Trump's rally and the subsequent insurrection at the U.S. Capitol, and continuing at least through Inauguration Day, January 20, 2021.

145. On or about January 5, 2021, a crowd surrounded Ms. Freeman's house, some on foot, some in vehicles, others equipped with a bullhorn. Fortunately, Ms. Freeman had followed the FBI's advice and had temporarily relocated from her home. She was not able to return for two months.

146. Since returning home, Ms. Freeman has had to install eleven cameras and three motion sensors in an effort to safeguard her own home.

147. Ms. Freeman was also forced to deactivate the social media pages for herself and her business, Lady Ruby's Unique Treasures, a pop-up clothing boutique. Though she has long been a local entrepreneur, she was forced to shutter her business when she was unable to attend public events or conduct online marketing through social media.

148. The reputational impacts of Defendant's lies continue to be felt across Ms. Freeman's social and professional networks. After being publicly accused of crimes, she has lost friendships.

149. When people recognize her in public and call out her name, Ms. Freeman is fearful. Her experiences over the months since Defendant' defamation campaign began have taught Ms. Freeman to be distrustful of strangers and concerned for her safety.

150. To this day, Ms. Freeman continues to be the subject of threatening communications.

B. Defendant's Conduct Has Harmed Ms. Moss.

151. The day after Defendant's campaign of falsehoods began, Ms. Moss's then-fourteen-year-old son informed her that numerous calls were coming into Ms. Moss's old phone, which he was using at the time. When he answered the calls, he was bombarded with racial slurs and threats of violence. One caller stated that her son "should hang alongside [his] nigger momma."

152. These harassing calls continued for months.

153. Defendant's defamation also caused Ms. Moss to suffer an onslaught of online harassment. She received dozens of messages through Facebook, LinkedIn, and Pinterest, many of which threatened violence. These messages did not merely suggest Ms. Moss should lose her job but insisted that she deserved to die and would be killed in retribution for her "treason." She has since deleted her LinkedIn account.

154. Because Ms. Moss had previously lived with her grandmother, it was her grandmother's address that harassers found and exploited. As they did with Ms. Freeman, these harassers repeatedly sent unwanted pizzas to Ms. Moss's grandmother's house.

155. On at least two occasions, strangers showed up at her grandmother's home and attempted to push into the house in order to make a "citizens' arrest." On these occasions, Ms. Moss's grandmother, who is in her mid-seventies, called her in a panic, confused and scared for her safety.

156. The impacts of Defendant's lies also followed Ms. Moss at work. The general email addresses used by the public to contact the Fulton County elections offices would forward incoming emails to Ms. Moss and many of her colleagues. As a result, Ms. Moss and her colleagues received, directly in their work in boxes, harassing emails sent to those public email addresses that specifically referenced Ms. Moss.

157. Inspired by the demonstrably false conspiracy theory Defendant pushed, strangers have protested about Ms. Moss outside of her Fulton County workplace, demanding she be fired from her job.

158. The harassment and widespread (false) perception that Ms. Moss committed election fraud left Ms. Moss feeling fearful in an office where she began work in 2012. Before the 2020 general election, she generally enjoyed the parts of her job that allowed her to work with and assist the public. But since Defendant's defamatory campaign, even when she was assisting constituents over the phone, she would begin to sweat and feel anxious if they asked her name. She became afraid that when people heard her name, they would think she is a fraud and a cheater.

159. Ms. Moss's workplace became a toxic environment. Her closest friends at work were warned to "watch the company they keep." The toxic environment led her to seek alternative employment.

160. Like her mother, Ms. Moss is now fearful whenever people recognize her in public. As a result, Ms. Moss has largely retreated from social and public life. She has gone as far as to

avoid the grocery store, opting to have groceries delivered in order to avoid it. She feels trapped by the unshakable fear that there are unknown people after her who want her dead.

161. Over the last year, Ms. Moss has suffered from disrupted sleep and has gained over fifty pounds as a result of the stress caused by Defendant's campaign of lies.

162. The onslaught of threats that Plaintiffs have experienced and the necessary measures they have been forced to take to protect themselves are the direct result of Defendant's defamatory conduct. Plaintiffs have and will continue to experience serious and severe emotional distress as a result. The harm Defendant has caused to Plaintiffs' reputations, privacy, safety, and earnings, and other pecuniary loss, is immense.

FIRST CLAIM
(Defamation/Defamation *Per Se*)

163. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully set forth herein.

164. Plaintiffs are private figures.

165. Defendant Giuliani published, caused to publish, or reasonably could have foreseen the publication of a series of false and defamatory statements of fact about Ms. Freeman and Ms. Moss, including by and through his agents making the statements themselves; and by republishing the statements on his website and social media accounts, as detailed extensively above. As a reasonably foreseeable—and intended—result of Defendant's statements and actions, others repeated and amplified these false and defamatory statements. The false implications were intentionally made through the false statements, by other statements that were misleading due to material omissions, by presenting misleading juxtapositions of statements, and when taking into account the context of each publication. The false implications were also made through the disinformation campaign as a whole. The defamatory meanings of Defendant's false statements

and implied statements of facts are apparent from the face of the publications, refer to Ms. Freeman and Ms. Moss by name, often are accompanied by images of Ms. Freeman and/or Ms. Moss, and/or are understood to be about them.

166. The statements authored and published by Defendant about Ms. Freeman and Ms. Moss are reasonably understood to state or imply that they:

a) had a history of engaging in fraudulent behavior;

b) engaged in a criminal conspiracy, along with others, to illegally exclude observers during the counting of ballots "under false pretenses" so that they could engage in election fraud;

c) criminally and/or fraudulently introduced "suitcases" of illegal ballots into the ballot counting process;

d) criminally and/or fraudulently counted the same ballots multiple times;

e) surreptitiously passed around flash drives that were not supposed to be placed in Dominion voting machines; and/or

f) committed crimes and other fraud.

167. Each of these statements and implications is false and defamatory per se.

168. Each of these statements was viewed, read, or listened to by thousands, and likely millions, of individuals.

169. Each of these false statements was published with actual malice, *i.e.*, with knowledge of its falsity or with reckless disregard as to its truth. At a minimum, Defendant acted negligently—that is, without an ordinary degree of care in assessing or investigating the truth of the statement prior to publication.

170. Defendant failed to contact and question obvious available sources for corroboration; disregarded reliable sources refuting his claims; had no credible basis for the false allegations made; and published his allegations in a manner to create false inferences.

171. Defendant had both financial and political motives for promulgating lies about Plaintiffs.

172. Defendant did not neutrally report the allegations about Ms. Freeman and Ms. Moss that were advanced by fellow members of the Trump campaign and promptly disproven by Georgia election officials. Nor did he acknowledge the actual facts. Rather, he endorsed and adopted the false allegations as his own, publishing and republishing them for months with full knowledge of their falsity or reckless disregard for their truth.

173. Defendant had no applicable privilege or legal authorization to make these false and defamatory statements, or if he did, he abused it.

174. Defendant's statements and implications about Ms. Freeman and Ms. Moss constitute defamation *per se* in that they damaged them in their trade, office, or profession and claimed that they participated in criminal activity punishable by law and labeled them a "robber" and a "cheat[er]."

175. Defendant acted with willful misconduct, malice, fraud, wantonness, oppression, and/or entire want of care which would raise the presumption of conscious indifference to consequences, and he specifically intended to cause Ms. Freeman and Ms. Moss harm.

176. Defendant's statements damaged Ms. Freeman's and Ms. Moss's reputations in the general public, in their professions, in their church communities, in their neighborhood, and with friends, relatives, and neighbors.

177. As a direct and proximate result of Defendant's conduct, Ms. Freeman and Ms. Moss have suffered significant general, actual, consequential, and special damages including, without limitation, impairment of reputation and standing in the community, personal humiliation,

mental anguish and suffering, emotional distress, stress, anxiety, lost earnings, and other pecuniary loss. Among other things, Ms. Freeman has lost income.

SECOND CLAIM
(Intentional Infliction of Emotional Distress)

178. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully set forth herein.

179. Defendant Giuliani's campaign of false and defamatory accusations directed specifically at Ms. Freeman and Ms. Moss was malicious, wanton, and intentional.

180. Defendant's wrongful conduct is so outrageous in character and so extreme in degree that it is beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community. Defendant Giuliani carried out his campaign with actual malice, as he either knew that his accusations were false or published them with reckless disregard for their truth.

181. Defendant's wrongful conduct was extreme and outrageous, and it was calculated to cause harm to Ms. Freeman and Ms. Moss.

182. Defendant acted with willful misconduct, malice, fraud, wantonness, oppression, and/or entire want of care which would raise the presumption of conscious indifference to consequences, and he specifically intended to cause Ms. Freeman and Ms. Moss harm.

183. Defendant's wrongful conduct had its intended effect. All aspects of Plaintiffs' lives have been altered as a result of Defendant's actions, including such simple things as where to live, how to go out in public, and when to see family and friends. This result was entirely foreseeable. Defendant's conduct is so outrageous in character and extreme in degree as to be beyond all bounds of decency. It should be regarded as atrocious and determined intolerable in a civilized community.

184. Defendant's wrongful conduct has inflicted severe emotional distress on Plaintiffs. They have suffered mental reactions including fright and fear for their safety; horror and helplessness in the face of the intense hatred directed at them by Defendant and by his viewers, listeners, and readers; anger; anxiety; sleeplessness; shame; and humiliation. The emotional distress Defendant caused to be inflicted on Ms. Freeman and Ms. Moss was so severe that no reasonable person could be expected to endure it.

185. Defendant's wrongful conduct caused physical manifestations of harm to Plaintiffs including weight gain, disrupted sleep, dental problems, and anxiety attacks, as well as mental anguish, requiring them to seek treatment for the mental anguish resulting directly from the severe emotional trauma inflicted by Defendant.

186. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered significant general, actual, incidental, and special damages including, without limitation, emotional distress, overwhelming stress and anxiety, lost earnings, and other pecuniary loss.

THIRD CLAIM
(Civil Conspiracy for All Alleged Torts)

187. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully set forth herein.

188. Defendant Giuliani agreed to intentionally and maliciously participate in a civil conspiracy with other individuals, the purpose of which was to commit the torts of Defamation, Defamation *Per Se*, and Intentional Infliction of Emotional Distress.

189. Throughout the course of the conspiracy, Defendant, acting in concert with other individuals, coordinated in furtherance of the common scheme.

190. Defendant agreed to launch a campaign to defame Plaintiffs, as evidenced by the Giuliani Strategic Plan document laying out this strategy, and his decision to repeatedly plan,

record, produce, and publish segments on the topic of election "fraud" in Georgia focused on Defendant's false claims about Plaintiffs.

191. As a result of Defendant's conspiracy, Plaintiffs suffered professional, reputation, and emotional harm. These torts caused the damages outlined in the previous causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant for each of the causes of action raised herein. Plaintiffs respectfully request a judgment in their favor and against Defendant for:

A. Nominal damages;

B. Compensatory damages, including general, actual, consequential, and special damages, in an amount to be determined at trial;

C. Punitive damages;

D. Reasonable and necessary attorneys' fees;

E. Reasonable and necessary costs of the suit;

F. Prejudgment and post-judgment interest at the highest lawful rates;

G. Declarative relief stating that the statements authored and published by Defendant and those attributable to Defendant as foreseeably reasonable republications identified within this complaint, individually and collectively, were and are false;

H. Injunctive relief enjoining Defendant to remove his false and defamatory statements about Plaintiffs from any website and/or social media accounts under their control; and

I. Such other and further relief as this Court deems just and appropriate.

Dated: May 10, 2022

Respectfully submitted,

By: */s/ Michael J. Gottlieb*

Michael J. Gottlieb (974960)
Meryl C. Governski (1023549)
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
Tel: (202) 303-1000
Fax: (202) 303-2000
mgottlieb@willkie.com
mgovernski@willkie.com

Von A. DuBose
DUBOSE MILLER LLC
75 14th Street NE
Suite 2110
Atlanta, Georgia 30309
Tel: (404) 720-8111
dubose@dubosemiller.com
Admitted pro hac vice

Kurt G. Kastorf (1011932)
KASTORF LAW LLC
1387 Iverson Street NE
Suite #100
Atlanta, GA 30307
Tel: (404) 900-0330
kurt@kastorflaw.com
Admitted pro hac vice

John Langford
Rachel Goodman
UNITED TO PROTECT DEMOCRACY, INC.
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org
Admitted pro hac vice

Christine Kwon*

UNITED TO PROTECT DEMOCRACY, INC.
Gas Company Tower
555 West 5th Street, 35th Floor
Los Angeles, CA 90013
Tel: (202) 579-4582
christine.kwon@protectdemocracy.org

Jessica Marsden*
UNITED TO PROTECT DEMOCRACY, INC.
510 Meadowmont Village Circle, No. 328
Chapel Hill, NC 27517
Tel: (202) 579-4582
jess.marsden@protectdemocracy.org

Brittany Williams*
Sara Chimene-Weiss*
UNITED TO PROTECT DEMOCRACY, INC.
15 Main St., Suite 312
Watertown, MA 02472
Tel: (202) 579-4582
brittany.williams@protectdemocracy.org
sara.chimene-weiss@protectdemocracy.org

**Pro hac vice application forthcoming*

Counsel for Plaintiffs

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUBY FREEMAN, *et al.*, Plaintiffs, v. RUDOLPH W. GIULIANI., Defendant.	Civil Action No. 21-3354 (BAH) Judge Beryl A. Howell

MEMORANDUM OPINION

The Federal Rules of Civil Procedure authorize "[l]iberal discovery" for the "sole purpose of assisting in the preparation and trial, or the settlement, of litigated disputes," *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984), with "the only express limitations [ ] that the information sought is not privileged, and is relevant to the subject matter of the pending action[,]" but without "differentiat[ing] between information that is private or intimate and that to which no privacy interests attach," *id*. at 30. As such, "the Rules often allow extensive intrusion into the affairs of both litigants and third parties." *Id*. Crucial to fulfilling this central purpose of civil discovery is that parties "comply fully and timely with their discovery obligations . . . to supply relevant testimony and documents for a fair appraisal of the facts and a 'just' determination." *Freeman v. Giuliani*, No. CV 21-3354 (BAH), 2023 WL 4750552, at *1 (D.D.C. July 13, 2023) (quoting FED. R. CIV. P. 1). Obviously, only extant documents and data are producible, so parties must also take reasonable efforts to preserve potentially relevant evidence, including electronically stored information ("ESI"), when litigation is "reasonably foreseeable." *Gerlich v. U.S. Dep't of Just.*, 711 F.3d 161, 170–71 (D.C. Cir. 2013). To incentivize and enforce compliance with these

procedural rules, sanctions may be imposed when ESI should have been preserved "in the anticipation or conduct of litigation" but "is lost because a party failed to take reasonable steps to preserve it[.]" FED. R. CIV. P. 37(e).

Defendant Rudolph W. Giuliani is taken at his word that he understands these obligations. He assured this Court directly that he "understand[s] the obligations" because he has "been doing this for 50 years[.]" Transcript of May 19, 2023 Mot. Hearing ("May 19 Hrg. Tr.") at 67:21–68:6, ECF No. 75. In this case, however, Giuliani has given only lip service to compliance with his discovery obligations and this Court's orders by failing to take reasonable steps to preserve or produce his ESI. Instead, Giuliani has submitted declarations with concessions turned slippery on scrutiny and excuses designed to shroud the insufficiency of his discovery compliance. The bottom line is that Giuliani has refused to comply with his discovery obligations and thwarted plaintiffs Ruby Freeman and Wandrea' ArShaye Moss's procedural rights to obtain any meaningful discovery in this case.

Rather than simply play by the rules designed to promote a discovery process necessary to reach a fair decision on the merits of plaintiffs' claims, Giuliani has bemoaned plaintiffs' efforts to secure his compliance as "punishment by process." *Id.* at 75:12. Donning a cloak of victimization may play well on a public stage to certain audiences, but in a court of law this performance has served only to subvert the normal process of discovery in a straight-forward defamation case, with the concomitant necessity of repeated court intervention. Due to Giuliani's discovery conduct, plaintiffs have filed two motions to compel production from Giuliani and his eponymous businesses, Giuliani Communications LLC and Giuliani Partners LLC (collectively, the "Giuliani Businesses"), *see* Pls.' Mot. Compel ("Pls.' MTC"), ECF No. 44; Pls.' Revised Mot. Compel Giuliani Partners & Giuliani Communications ("Pls.' Giuliani Businesses Motion"), ECF

No. 70, resulting in two discovery hearings, Minute Entries (Mar. 21, 2023; May 19, 2023), the issuance of multiple orders seeking his discovery compliance or otherwise sanctioning him for noncompliance, *see, e.g.,* Minute Orders (Mar. 21, 2023; May 19, 2023; May 31, 2023; June 22, 2023; June 23, 2023; July 13, 2023; July 26, 2023). Along the way, Giuliani has been afforded several extensions of time to comply with court orders and his discovery obligations. *See, e.g.,* Minute Order (Aug. 31, 2022) (extending close of fact discovery from November 22, 2022 to May 22, 2023); Minute Order (June 16, 2023) (extending compliance with May 31, 2023 Minute Order Order compelling discovery by two weeks); Minute Order (July 13, 2023) (providing Giuliani with an additional 35 days to comply with the May 31, 2023 Minute Order). As the discussion below reveals, however, the result of these efforts to obtain discovery from Giuliani, aside from his initial production of 193 documents, is largely a single page of communications, blobs of indecipherable data, a sliver of the financial documents required to be produced, and a declaration and two stipulations from Giuliani, who indicates in the latter stipulations his preference to concede plaintiffs' claims rather than produce discovery in this case.[1]

Giuliani's preference may be due to the fact, about which he has made no secret, that he faces liability, both civil and criminal, in other investigations and civil lawsuits. *See* Mar. 21, 2023

[1] In addition to Giuliani's recalcitrant discovery conduct, plaintiffs have also faced challenges in obtaining relevant information from his associates, who were part of the effort by Giuliani, and others, to sow doubt in the fairness and legitimacy of the 2020 presidential election, further necessitating judicial intervention. *See, e.g.*, Minute Order (Dec. 20, 2022) (authorizing plaintiffs to serve Katherine Friess with a subpoena, issued pursuant to Federal Rule of Civil Procedure 45 ("Rule 45 Subpoena"), via alternate means, after plaintiffs spent considerable resources to serve Freiss "ten times over four months at six different addresses in three different states"); Minute Order (May 10, 2023) (authorizing plaintiffs to serve Jenna Ellis with Rule 45 Subpoena, via alternate means, after plaintiffs spent considerable resources to "serve her three times at an address where she is believed to have recently resided and where her mother currently resides"); *Freeman*, 2023 WL 4750552 at *2 (detailing Bernard Kerik's failure to comply with a Rule 45 Subpoena and granting, in part, plaintiffs' motion to compel compliance). As to Kerik, plaintiffs recently advised that they contest Kerik's withholding of responsive records as privileged, and request *in camera* review, of 318 withheld documents, Pls.' Status Report Re Bernard Kerik Discovery at 2–3, ECF No. 87, but given resolution of the instant motion by entry of default judgment on liability against Giuliani, plaintiffs' request for *in camera* review is denied as moot since plaintiffs have provided no information to suggest that such documents would be relevant to the quantification of damages. As a result, plaintiffs have been denied access to discovery from Giuliani and his associates both to support their claims and to defeat any defenses proffered at a trial on the merits.

Transcript of Discovery Hearing ("Mar. 21 Hrg. Tr.") at 22:6–12, ECF No. 41 (Giuliani stating that he has "seven or eight cases that had pending requests for discovery" including "not just civil but criminal investigations"); *see also infra* n.8 (describing submission in this case of declaration by Giuliani's defense attorney's in prior criminal investigation). Perhaps, he has made the calculation that his overall litigation risks are minimized by not complying with his discovery obligations in this case. Whatever the reason, obligations are case specific and withholding required discovery in this case has consequences.

Giuliani's willful discovery misconduct has now led, inexorably, to plaintiffs' pending motion for sanctions due to his "Failure To Preserve Electronic Evidence," seeking, *inter alia*, the entry of default judgment against Giuliani. *See* Pls.' Mot. for Discovery Sanctions Against Def. Giuliani ("Pls.' Mot."), ECF No. 81. Giuliani has also not complied with two other court orders requiring him both to produce certain requested, routine financial documents relevant to plaintiffs' claims for punitive damages, and to reimburse plaintiffs for attorneys' fees and costs associated with their first motion to compel, failures for which plaintiffs request additional sanctions. Updated Joint Status Report ("Aug. 4 JSR") at 5–6, 18, ECF No. 89. Additionally, plaintiffs' have sought sanctions due to noncompliance by Giuliani's eponymous businesses with document and deposition requests, after their motion to compel compliance was granted as conceded. *See infra* Part 1.C (outlining procedural history and status of plaintiffs' Giuliani Businesses Motion).

Facing court orders compelling his discovery compliance and potential default judgment as a sanction for failing to preserve ESI, Giuliani filed two personally executed, but unsworn, "stipulations" admitting, for the purposes of this litigation, liability on the factual elements of plaintiffs' claims and their entitlement to punitive damages. *See* Def.'s Resp. Pls.' Mot. ("Def.'s Mot. Resp."), "Nolo Contendre [sic]" Stipulation ("Giuliani Stip."), ECF No. 84-2; "Superseding

Nolo Contendre [sic]" Stipulation ("Giuliani Superseding Stip."), ECF No. 90. Giuliani's stipulations hold more holes than Swiss cheese, with his latest stipulation expressly reserving "his arguments that the statements complained of are protected and non-actionable opinion for purposes of appeal[,]" Giuliani Superseding Stip. ¶¶ 5-6, which arguments were previously rejected in this Court's decision denying defendant's motion to dismiss, *see Freeman v. Giuliani*, No. CV 21-3354 (BAH), 2022 WL 16551323, at *8 (D.D.C. Oct. 31, 2022). The reservations in Giuliani's stipulations make clear his goal to bypass the discovery process and a merits trial—at which his defenses may be fully scrutinized and tested in our judicial system's time-honored adversarial process—and to delay such a fair reckoning by taking his chances on appeal, based on the abbreviated record he forced on plaintiffs. Yet, just as taking shortcuts to win an election carries risks—even potential criminal liability—bypassing the discovery process carries serious sanctions, no matter what reservations a noncompliant party may try artificially to preserve for appeal.

The downside risk of turning the discovery process into what this Court has previously described as a "murky mess," May 19 Hrg. Tr. at 105:22, is that Rule 37 provides a remedy: sanctions, including entry of default judgment, against Giuliani. *See* FED. R. CIV. P. 37(e)(2)(C); 37(b)(2)(a)(vi). Given the willful shirking of his discovery obligations in anticipation of and during this litigation, Giuliani leaves little other choice. For the reasons set out below, the pending motion is granted. Default judgment will be entered against Giuliani as a discovery sanction pursuant to Rules 37(e)(2)(C) and 37(b)(2)(a)(vi), holding him civilly liable on plaintiffs' defamation, intentional infliction of emotional distress, civil conspiracy, and punitive damage claims, and Giuliani is directed to reimburse plaintiffs for attorneys' fees and costs associated with their instant motion.

In addition, as this case now heads to trial to determine any damages due on plaintiffs' claims, Giuliani will be given a final opportunity to comply with discovery relevant to the determination of damages, both compensatory and punitive, or face imposition of additional discovery-related sanctions, under Rule 37(b)(2), in the form of adverse instructions and exclusion of evidence at trial, as outlined in more detail below. Specifically, Giuliani is directed, by September 20, 2023, to do the following:

a. produce complete responses to plaintiffs' requests for financial documents, set out in plaintiffs' Requests for Production ("RFP") Numbers 40 and 41, which he was previously ordered to produce by June 30, 2023, *see* Minute Order (June 22, 2023);

b. ensure the Giuliani Businesses produce complete responses to plaintiffs' requests for financial documents and viewership metrics, including RFP Numbers 19 and 35, seeking records sufficient to show how his podcast, called *Common Sense*, generates revenue, including through advertising agreements and distribution contracts, and records sufficient to summarize viewer and listener metrics for Giuliani's statements on social media and *Common Sens*e from the date of original publication through the present, including reach, count, page visits, posts, shares, time spent, impressions, and listener numbers, and the number of online views and/or impressions of any statements Giuliani made about plaintiffs, as described in the Amended Complaint ¶¶ 57-101, ECF No. 22, as well as designate one or more corporate representatives to sit for depositions on those businesses' behalf; and

c. reimburse plaintiffs' attorneys' fees and costs associated with their successful first motion to compel discovery from Giuliani, in the amount totaling $89,172.50, with interest on that

amount from July 25, 2023, which is when this reimbursement payment was originally due, *see* Minute Order (July 13, 2023); and

d. ensure the Giuliani Businesses reimburse plaintiffs' attorneys fees associated with their successful motion to compel discovery from the Businesses, in the amount totaling $43,684, with interest on that amount to accrue from September 20, 2023 until the date of final judgment against Giuliani personally if his eponymous businesses fail to comply.

I. BACKGROUND

The factual background of this case has been detailed previously in this Court's decision denying Giuliani's motion to dismiss plaintiffs' Complaint. *See Freeman*, 2022 WL 16551323. Summarized below is the factual and procedural history leading to plaintiffs' pending motion for sanctions, including entry of default judgment on their claims, which relief plaintiffs seek after two discovery hearings, two motions to compel production filed by plaintiffs, and multiple court orders requiring Giuliani to explain his discovery conduct and comply with applicable procedural rules. Giuliani has exploited these opportunities for delay, resulting in the extension of the fact discovery period by six months, unaccompanied by production of any meaningful discovery in response, all of which adds up to Giuliani's failure to comply with his basic preservation and production discovery obligations for both himself and his two businesses.

A. Discovery Issues Leading to March 21, 2023 Hearing and Order

Following Giuliani's answer to the Complaint, a Scheduling Order was entered adopting the parties' proposal that initial discovery disclosures, as required under Federal Rule of Civil Procedure 26(a)(1), be exchanged by May 18, 2022, and that all fact discovery close by November 22, 2022. *See* Minute Order (April 26, 2022) (granting parties' "Joint Motion for Order Approving the Schedule Propose in the Concurrently Filed Joint Meet and Confer Report"). This seven-

month discovery period proved insufficient, prompting the parties' joint request for additional time to complete discovery until May 22, 2023, a full seventeen months after the filing of the lawsuit. *See* Minute Order (Aug. 31, 2022) (granting parties' "Joint Motion to Extend Discovery").

After plaintiffs propounded their first set of discovery requests, in May 2022, Giuliani, through his counsel, advised plaintiffs that the Federal Bureau of Investigation ("FBI") had seized his electronic devices in April 2021. Pls.' MTC, Decl. of Meryl C. Governski ("Governski Decl."), Ex. 2 at 2–3, Aug. 5, 2022 Email from Def.'s Counsel to Pls.' Counsel ("Def.'s Counsel's Aug. 5, 2022 Email"), ECF No. 44-4. Though his devices were returned no later than August 19, 2022, Giuliani claimed he "lost access to some of these accounts after the seizure[,]" and he and his counsel would "need to assess the status" of those accounts, *id.*, Ex. 3 at 4, Aug. 19, 2022 Email from Def.'s Counsel to Pls.' Counsel, ECF No. 44-5. Despite Giuliani's repeated reliance on the FBI's seizure of his electronic devices to excuse his discovery preservation and production failings, responsive information held in his email and other communications-related accounts could and should have been preserved since the contents of these accounts presumably remained accessible online and through alternative devices. As to Giuliani's preservation obligations, Giuliani's counsel pointed to a dataset held by TrustPoint One ("TrustPoint"), with assurances that this dataset contained "all the data" collected by the FBI from Giuliani's seized devices. *See id.*, Ex. 4 at 10, Sept. 30, 2022 Email from Def.'s Counsel to Pls.' Counsel, ECF No. 44-6. Between July 12 and November 1, 2022, Giuliani produced to plaintiffs a total of 193 "documents[,]" all of which were sourced to the TrustPoint dataset. Pls.' MTC at 7–8.

Given the meager number of documents produced over seven months of discovery, *see* Mar. 21 Hrg. Tr. at 8:18-21 (observation by Court that the number of documents produced were "fairly small" "based on the length of time, the amount of public statements that were made . . . in

connection with the claims in this case"), plaintiffs requested, on December 21, 2022, confirmation from Giuliani's counsel that Giuliani had taken reasonable steps to preserve his electronic evidence, Governski Decl., Ex. 5 at 2, Dec. 22, 2022 Email from Pls.' Counsel to Def.'s Counsel, ECF No. 44-7, but the response was not encouraging. Giuliani's counsel replied, "I am not aware of his preservation efforts." *Id.*, Dec. 27, 2022 Email from Def.'s Counsel to Pls.' Counsel. Plaintiffs reiterated, on February 6, 2023, the request that Giuliani's counsel confirm that Giuliani preserved, searched, and produced ESI on his "e-mail accounts, devices, social media accounts, messaging applications, or other electronic devices for documents responsive to" plaintiffs' Requests for Production ("RFPs"), but received no response. *See generally* Pls.' Mot., Declaration of Michael J. Gottlieb ("Gottlieb Decl."), Ex. 1, Jan. 31 to Feb. 6, 2023 Email Chain between Pls.' Counsel and Def.'s Counsel, ECF No. 81-2.

Plaintiffs had the opportunity to query Giuliani directly about his preservation and search efforts at his deposition, on March 1, 2023. Giuliani testified under oath that he used multiple phones, email addresses, and messaging applications in the months following the 2020 presidential election. Gottlieb Decl., Ex. 4, Mar. 1, 2023 Dep. Tr. of Rudolph W. Giuliani ("Giuliani Dep. Tr.") at 17:4–19, 21:5–25, 22:24–25:6, ECF No. 81-5 (Giuliani testifying that he "[t]ypically . . . had two phones" and has "a bunch of inoperative phones[,]" though, "[r]ight now," he "really [has] officially one phone[,]" he had "a Gmail account and then . . . several offshoot accounts, like RudyGiuliani@me.com," and a "ProtonMail account[,]" and he sent messages on "Twitter . . . Signal, Telegram, [and] Whatsapp" "around the time of the 2020 election"). Giuliani described his search effort as taking "a quick look" for responsive material on messaging platforms and some of his devices, without providing any detail as to whether that "quick" search was tailored to the instant case or whether he ever reached out to any of the companies he used for messaging

applications to ask that his data be preserved. *Id.* at 25:19–26:8, 26:9–27:7, 28:9–16. Compounding this preservation failure, Giuliani claimed that his devices seized by the FBI in April 2021 were found to be "wiped out" when returned to him. *Id.* at 391:23–392:11.[2]

In accordance with the procedure set out by this Court's Standing Order, ¶ 8, ECF No. 4, to address discovery disputes promptly, plaintiffs alerted the Court about concerns over Giuliani's apparent failure to comply with his discovery obligations, and a hearing regarding the parties' dispute was set for March 21, 2023. *See* Minute Entry (Mar. 16, 2023). At that hearing, in response to the Court's question whether Giuliani had "locked down—put a litigation hold on—all of his records given the pendency of this litigation," Mar. 21, 2023 Hrg. Tr. at 10:22–11:2, Giuliani's counsel stated, "Well, Your Honor, I think the answer is yes. I don't know . . . [b]ut, certainly, the documents were taken by the [Department of Justice ("DOJ")] were locked—in April of 2021. So all of those documents are fixed, so that's certainly locked in." *Id.* at 11:3–8. Giuliani's counsel also indicated that the TrustPoint dataset contained complete images of all data on Giuliani's devices seized by the FBI in April 2021. *Id.* at 18:9–21 ("[A]ll of the files that were extracted were put onto one server, which we then got a copy of from the DOJ, and that's—with an electronic discovery vendor called Trustpoint.One, and so that's what we searched.").[3] This left unclear

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[2] On June 29, 2023, Giuliani's counsel provided plaintiffs with an unsealed motion filed by Giuliani's criminal counsel in *In re Search Warrant Dated April 21, 2021,* 21-MJ-4335 (S.D.N.Y.), which motion makes clear that the records collected in the TrustPoint database were collected as part of an investigation into a possible Foreign Agents Registration Act ("FARA") violation "involving Ukrainian individuals, Ambassador Maria Yovanovitch and the office of the U.S. Ambassador to the Ukraine; a trip by Giuliani to Poland in 2019 and issues involving Franklin Templeton and funds misappropriated from the Ukraine." Gottlieb Decl. ¶ 7 (citation omitted from original). This motion also contains Giuliani's "criminal defense counsel request[] that the New York court order the Government to suppress and destroy the majority of records contained in the TrustPoint database, and limit any remaining records to a time period between 2018 and 2019." *Id.*

[3] At the March 21 Hearing, Giuliani and his counsel could not provide clear answers when pressed for details about the TrustPoint dataset, including when they got access to this dataset or the specific device number or sources for, or types of, ESI in the dataset. *See, e.g.*, Mar. 21 Hrg. Tr. at 18:5–19:5 (Giuliani's counsel stating that his "understanding" was that "all of the files that were extracted were put onto" TrustPoint, without knowing for certain what types of ESI were on the server and over what date range); *id.* at 21:23–22:5 (Giuliani stating that he was "not sure of" when he "first [got] access to the Trustpoint" dataset); *id.* at 20:8–15 (Giuliani stating that the FBI "seized

whether the TrustPoint dataset contained data from any of Giuliani's social media accounts or email or other messaging accounts.

Given the lack of clarity at the March 21 hearing in responses to queries about what precisely had been preserved, or not, and searched, or not, Giuliani was directed, *inter alia*, to: "(a) submit notice to the Court describing in specific terms the data on the 'TrustPoint' database that were searched in response to Plaintiffs' [RFPs], including date range and contents . . . ; and (b) what locations and data sources remain for searches to be completed to respond fully to plaintiffs RFPs." Minute Order (March 21, 2023) ("March 21 Order"). In response, Giuliani filed, through his counsel, a two-page "report" on March 24, 2023, which did not describe in specific terms the data sources located on TrustPoint or what locations and data sources remained to be searched. *See generally* Def.'s Report to the Court Re March 21, 2023 Minute Order, ECF No. 40 (stating that the TrustPoint server contained "all files . . . that existed as of the time they were taken in April 2021 all the way back (for some of the devices) to February 24, 1995," including "email files, pdfs, images, word files, as well as text and messenger files from messaging applications," without identifying which specific devices' (i.e. computers, tablets, and phones) and data sources (i.e., which messaging platforms (iMessage, Signal, Whatsapp) and email accounts) that the TrustPoint database's ESI encompassed, or whether TrustPoint held Giuliani's ESI for both his

every single electronic device, both in [his] home and in [his] law office" without explaining what data from each of those devices were stored on TrustPoint); *see also id.* at 19:6–15 (The Court instructing Giuliani's counsel "to get a much better definition of what documents were put on" TrustPoint because his answers to questions concerning TrustPoint were "all way too vague" and suggested Giuliani and his counsel do not "know what's been put up on that database"). Even almost three months after this hearing, Giuliani remained unclear as to what data was in the TrustPoint dataset, attesting in his declaration, filed on May 30, 2023, that "I am not sure whether data from my social media accounts of YouTube, Facebook, Instagram, and Twitter were extracted from these devices because I do not recall whether I used website access on my devices for these accounts or whether I accessed them from social media apps." Decl. of Rudolph Giuliani In Compliance with Court Minute Order, dated May 30, 2023 ¶ 5, ECF No. 60. He went on to note that "If the access was via the web, no data from social media would have been extracted from the devices," *id*., meaning the contents of his social media accounts would not be stored in the TrustPoint dataset.

eponymous businesses and his personal files). The March 21 Order also directed Giuliani to "complete searches and production of responsive records to plaintiffs' RFPs," and further directed the parties to file a joint status report "by April 10, 2023, . . . apprising the Court on their progress in resolving their discovery disputes, [and] clarifying whether plaintiffs intend to file any motion to compel[.]"

On April 10, 2023, the parties filed a joint status report, in which plaintiffs explained that "the Parties are at an impasse" with respect to "Giuliani's document productions to date" and requested leave to file a motion to compel. Apr. 10, 2023 Joint Status Report at 1, ECF No. 42. Plaintiffs explained that, while Giuliani provided them with a "supplemental production . . . that consisted of a single page with images of what appear[ed] to be five direct messages from Sidney Powell on Twitter" and claimed privilege over "an additional eight documents," his production was still plainly insufficient since Giuliani was relying on "undefined manual search[es] . . . of an unknown set of social media accounts," an "undefined manual search . . . of an unknown set of 'new devices,'" productions "in response to discovery requests from a voting machine company in another [civil] case . . . [that had] almost no overlap with Plaintiffs' discovery requests," and "a subset of files in the TrustPoint database[.]" *Id.* at 5–6 (emphasis omitted). Plaintiffs also raised questions about the universe of files in the TrustPoint database, explaining that Giuliani had "never represented that all electronic devices he possessed at the time were seized by the DOJ in April 2021, or that all of the files from all of the devices seized are captured in the TrustPoint database as opposed to some subset of documents responsive to a warrant and not minimized." *Id.* at 6–7 (emphasis omitted). Plaintiffs were granted leave to file a motion to compel, Minute Order (Apr. 11, 2023), with a schedule set for the filing of the motion and briefing to be complete by May 8, 2023.

B. Plaintiffs' First Motion to Compel Leading to May 19, 2023 Hearing and Order

Due to Giuliani's failure to articulate any specific steps he had taken to preserve his ESI—other than relying on the FBI's seizure of his devices—and the vague descriptions of the TrustPoint dataset and the searches conducted thus far, plaintiffs moved, on April 17, 2023, to compel Giuliani to produce or justify "the withholding of all materials in his possession, custody, or control responsive to Plaintiffs' requests for production," provide "a sworn declaration regarding the preservation efforts he has taken, all locations and data that he used to communicate about relevant topics, the specific 'data' that is housed in [TrustPoint], and the searches he has conducted to locate responsive documents[,]" and reimburse plaintiffs attorneys' fees for the costs of their motion. Pls.' MTC at 6.

In response, Giuliani submitted his personal declaration about his efforts to preserve and search for records responsive to plaintiffs' RFPs. *See* Def.'s Resp. to Pls.' MTC ("Def.'s MTC Resp."), Decl. of Rudolph Giuliani Supp. Def.'s Resp. ("Giuliani Decl.") ECF No. 51-1. Giuliani reiterated that the "TrustPoint One documents consisted of all documents that were extracted from [his] electronic devices taken by the DOJ in April 2021[,]" *id.* ¶ 4, still failing to describe whether his electronic devices contained all responsive contents of his social media and messaging accounts and thus whether those account contents were in the TrustPoint dataset. He further stated that he had used "Plaintiffs' search terms" to search "email files" in that dataset, *id.* ¶ 3. Likewise, he used "the search terms provided by the Plaintiffs to conduct" searches "manually" of "all of [his] electronic devices obtained after the April 2021 DOJ seizure for text messages, emails, and other documents" and "all of [his] social media messaging accounts[,]" and he separately also "pulled . . . everything related to any 2020 Election issues" from his "paper files" and files provided by Christina Bobb and Christiane Allen. *Id.* ¶¶ 2-3. Giuliani's description of his searches raised more

questions, prompting the need for another hearing to clarify, among other matters, how the so-called "manual[]" searches were conducted and confirmed as thorough and accurate, whether the TrustPoint dataset encompassed all of his pre-April 2021 ESI on his email, social media, and messaging applications not specifically stored on his seized devices, or whether that data was lost. Giuliani also, for the first time, claimed that any further searches of the TrustPoint dataset would not be possible because those "documents have now been archived[,]" and "[i]t would cost [him] over $320,000.00 to become current on [his] arrearage with TrustPoint One and to have access to the documents as well costs [sic] incurred in searching the documents again for additional files[,]" but he did "not have funds to pay [that] amount at this time." *Id.* ¶ 5. No information was provided explaining when or why this data became inaccessibly "archived," or whether the cost to obtain access to all the archived data could be less to examine only a subset of the data in a timeframe responsive to plaintiffs' discovery requests.

At a several-hour hearing, on May 19, 2023, regarding plaintiffs' motion to compel, Giuliani acknowledged his obligation to preserve documents related to this litigation and that this obligation arose before plaintiffs filed this action, stating, "I have been doing this for 50 years; I understand the obligations." May 19 Hrg. Tr. at 67:21–68:6. When asked for the steps taken to preserve electronic evidence, Giuliani's counsel stated that Giuliani "has not deleted any documents[,]" *id*. at 65:20–25, even though, as the Court explained, "not deleting documents is not the same as preserving the information in a manner that can be retrieved and searched." *Id*. at 66:1–20. Giuliani repeated his excuse for failure to preserve responsive data, blaming the government's seizure of his devices in April 2021, for his purported loss of access to data created before that date. *See id.* at 53:4–8, 67:11–18, 95:17–97:8.

Following the May 19 hearing, the Court granted plaintiffs' motion to compel, in part, and directed that, by May 30, 2023, Giuliani describe, subject to penalty of perjury, "a) All efforts taken to preserve, collect, and search potentially responsive data and locations that may contain responsive materials to all of plaintiffs' [RFPs]; b) A complete list of all 'locations and data' that [Giuliani] used to communicate about any materials responsive to any of plaintiffs' RFPs . . . ; [and] c) The specific 'data' located in the TrustPoint database . . . ." Minute Order (May 19, 2023) ("the May 19 Order"). Furthermore, "in order to evaluate [Giuliani's] claim of an inability to afford the cost of access to, and search of, the TrustPoint dataset or to use a professional vendor," Giuliani was also directed to produce to plaintiffs, by May 30, 2023, "a) full and complete responses to plaintiffs' requests for financial information in RFP Nos. 40 and 41; and b) documentation to support his estimated costs for further searches on the TrustPoint dataset." *Id.*[4]

Giuliani timely filed a declaration. Decl. of Rudolph Giuliani in Compliance with Court Minute Order, dated May 30, 2023 ("Second Giuliani Decl.") ¶ 3, ECF No. 60. This declaration summarized six different data sources as likely to contain or having contained at some point, responsive information, including: (1) three personal email accounts (Gmail, iCloud, and ProtonMail); (2) an iCloud account; (3) three phone numbers that he used to send messages via

[4] Plaintiffs' RFP 40 asked for "Documents sufficient to show Your yearly income since 2018 and Your current net worth, including but not limited to Your tax returns for the years 2018 through 2021, all periodic statements from January 1, 2018 to the present date for all Your checking accounts, and all Your other accounts, including but not limited to savings accounts, money market funds, mutual fund accounts, hedge fund accounts and certificates of deposit, regardless of whether or not the account has been closed, including those held jointly with another person or entity, all insurance policies on Your life which are presently in force whether owned by you or any corporation in which You are an officer, director or stockholder or employee, copies of all applications for credit or loans from any bank, credit union, lending institution, issuer of credit cards and any related financial statements prepared by or on Your behalf since January 2018, copies of any corporate tax returns for all corporations in which You were or are a stockholder during any part of the years 2018 through present, copies of any partnership tax returns filed by You or on Your behalf since December 2018, and financial statements." Governski Decl., Ex. 1, Chart Summarizing Pls.' Requests for Production ("Pls.' RFP Chart") at 7, ECF No. 44-3. Plaintiffs' RFP 41 asked for "All filings in Judith S. Giuliani v. Rudolph Giuliani, Docket No. 350019/2018 (N.Y. Sup Ct. Aug 31, 2018) and all filings related to the enforcement of the terms of the settlement agreement reached in Judith S. Giuliani v. Rudolph Giuliani, Docket No. 350019/2018 (N.Y. Sup Ct. Aug 31, 2018), including, but not limited to, Judith S. Giuliani's lawsuit filed in the Supreme Court of the State of New York in or around August 2022." *Id.*

text and messaging applications; (4) three messaging applications (Signal, WhatsApp, Telegram); (5) five social media handles ("Giuliani Social Media Accounts"; collectively, data sources (1) through (5), "Giuliani Communications Accounts"); (6) and nine devices, two of which were not seized by the FBI (collectively, "Giuliani Devices"; "Seized Devices" as to the seven seized; "Unseized Devices" as to the two unseized). *Id.* ¶ 3. He also confirmed that his only step to preserve evidence on his Devices and Communications Accounts was to turn off the auto-delete function sometime "in late 2020 or early 2021" on his "email, messaging, communication, or other document storage platforms" and that he did not manually delete "any electronic documents or dispose[] of any paper files[.]" *Id*. ¶ 2. Finally, while reiterating that the TrustPoint dataset contained "all documents that were extracted from the electronic devices taken by the DOJ in April 2021," *id*. ¶ 4, Giuliani was notably silent as to whether that dataset contained all data from the Giuliani Communications Accounts and Seized Devices, only some subset of the contents of those sources, or no data from any of those accounts and applications, and what steps he took to preserve ESI on the Unseized Devices, no data from which would be in the TrustPoint dataset because those devices were not seized by the FBI.

Giuliani was also required to produce, by May 30, 2023, financial information responsive to plaintiffs' RFPs 40 and 41, but he sought reconsideration of this aspect of the May 19 Order, explaining that "he has obtained funding to pay the arrearage with TrustPoint to allow for full and complete searches responsive to Plaintiffs' RFPs." Def.'s Mot. Reconsider. Court's May 19 Minute Order ("Def.'s Mot.") at 1, ECF No. 61. While Giuliani's obligation to respond to plaintiffs' RFPs 40 and 41, was stayed, pending completion of briefing on his motion for reconsideration and in light of his "representation that he has obtained adequate funds to 'cure[] the arrearage with TrustPoint and the data is in the process of being unarchived,'" the Court

directed him, by June 16, 2023, to "search and produce all materials responsive to plaintiffs' RFPs, with the exception of RFPs Nos. 40 and 41, within the date ranges agreed to by the parties, with the assistance of a professional vendor, and produce a privilege log specifically tailored to the searches he has performed for materials responsive to plaintiffs' RFPs." Minute Order (May 31, 2023) ("May 31 Order"); *see also* Minute Order (June 16, 2023) (granting Giuliani's unopposed motion for extension of time to produce all materials responsive to plaintiffs' RFPs, other than RFPs 40 and 41, by June 30, 2023).[5]

Plaintiffs filed their combined opposition to Giuliani's Motion for Reconsideration and response to Giuliani's Second Declaration on June 14, 2023. *See* Pls.' Combined Opp'n Def.'s Mot. & Resp. Def.'s Decl. ("Pls.' Opp'n"), ECF No. 64. In opposition to Giuliani's Motion, plaintiffs argued, *inter alia*, that Giuliani's financial materials were relevant to both liability and punitive damages to show "whether he earned any additional income or increased viewership or followers" by making false statements against plaintiffs, which "is directly relevant to fault." *Id.* at 9–11. With respect to the Second Giuliani Declaration, plaintiffs raised serious questions about Giuliani's preservation efforts, explaining that the Declaration failed "sufficiently [to] describe his efforts to *preserve* potentially responsive data and sources, and instead relies on whatever the

[5] The May 31 Order's directive to Giuliani to produce all materials responsive to plaintiffs' RFPs encompassed Giuliani's obligation to search for and produce responsive materials from the Giuliani Businesses. *See* Minute Order (June 22, 2023) (directing Giuliani to file a declaration, subject to penalty of perjury, that, *inter alia*, "[c]onfirms that" Giuliani "is collecting searching, and producing responsive materials from the Giuliani Businesses"). Giuliani filed a declaration, on June 26, 2023, confirming that he was "collecting, searching, and producing responsive materials from [the Giuliani Businesses] that are in [his] possession, custody, or control." Decl. of Rudolph Giuliani, dated June 26, 2023 ("Third Giuliani Decl.") ¶ 12, ECF No. 73. Giuliani also confirmed that he was the sole owner of his eponymous businesses. *Id.* ¶¶ 2-3 (attesting that he is the owner of Giuliani Partners LLC, which, in turn, is the owner of Giuliani Communications LLC); *see also id.* ¶¶ 10-11 (further attesting that Giuliani Partners LLC "has No assets," while Giuliani Communications LLC "has media equipment in assets"). The May 31 Order also directed that, by June 30, 2023, the parties "jointly submit a status report on discovery compliance and any outstanding issues" with respect to discovery compliance, inclusive of Giuliani's compliance with producing responsive records from the Giuliani Businesses. Plaintiffs also separately filed a motion to compel discovery from the Giuliani Businesses, which motion was granted as conceded by Giuliani, with relief reserved pending the resolution of the instant motion for sanctions. *See infra* Section I.C.

government did with the devices seized in April 2021, which Defendant Giuliani does not know and cannot describe." *Id.* at 12 (emphasis in original). Plaintiffs also argued that Giuliani did not provide "sufficient information for this Court (or Plaintiffs) to know what is and is not in the TrustPoint database" and that "any explanation about any efforts taken to preserve any of Defendant Giuliani's professional files" and any ESI on his "Unseized Devices." *Id.* at 15–19. Due to these continuing discovery compliance gaps, plaintiffs sought leave to file a motion for sanctions for Giuliani's failure to preserve ESI, *id.* at 18, which request was granted, *see* Minute Order (June 23, 2023) (granting plaintiffs' request for leave to file instant motion and setting briefing schedule).

In addition to the May 19 Order, three successive orders (collectively, including the March 21 and May 19 Orders, the "Discovery Orders"), granted plaintiffs' requested relief in nearly all respects. First, upon consideration of the completed briefing on Giuliani's motion for reconsideration of the May 19 Order, reconsideration was denied, Minute Order (June 22, 2023) ("June 22 Order"), and Giuliani was directed "to produce responses to plaintiffs' [RFP] Nos. 40 and 41 by June 30, 2023." *Id.* Second, plaintiffs' request for attorneys' fees and costs associated with the filing of their motion to compel was granted, and Giuliani was directed to pay those costs and fees by July 25, 2023, subject to a filing by plaintiffs detailing the costs and fees incurred. Minute Order (June 23, 2023) ("June 23 Order"). Plaintiffs timely detailed their costs and fees, explaining that the total costs incurred in preparation for their motion to compel amounted to $89,172.50. Pls.' Submission Detailing Costs & Fees Incurred at 11, ECF No. 78. Giuliani neither contested the reasonableness of plaintiffs' costs and fees, nor filed any objection and, accordingly, he was directed to reimburse plaintiffs $89,172.50 in attorneys' fees incurred for plaintiffs' MTC by July 25, 2023. *See* Minute Order (July 13, 2023) ("July 13 Order"). As of the parties' most

recent joint status report, Giuliani has not reimbursed plaintiffs the court-ordered $89,172.50 in attorneys' fees and costs, let alone by the due date in July, 2023. Aug. 4 JSR at 17.

As required by the May 31 Order, the parties submitted a joint status report on June 30, 2023, which report indicated that, despite repeated court interventions, Giuliani was not taking the Discovery Orders seriously. Specifically, the status report stated that Giuliani had "taken no steps to collect and search repositories outside of TrustPoint[,]" had produced no materials from the Giuliani Businesses—notwithstanding his statement, subject to penalty of perjury, in his Third Declaration that he was searching for and collecting responsive materials from his eponymous businesses, *see supra* n.5—and only produced documents from TrustPoint that "appear to consist almost exclusively of non-usable, non-readable raw data[.]" Joint Status Rep. at 9, 13 ("June 30 JSR"), ECF No. 77. Notably, Giuliani did not contest these discovery shortcomings and failures to comply with the Discovery Orders as described in the June 30 JSR. *See id.* at 17 ("Defendant generally agrees with Plaintiffs' recitation of events[.]"). In view of these generally undisputed, continuing discovery failures, Giuliani was given another opportunity to comply with his discovery obligations and cautioned that a failure to comply with the May 31 Order "may result in severe discovery sanctions." July 13 Order (directing the parties to "submit an updated status report on discovery compliance and any outstanding issues" by August 4, 2023 and cautioning that default judgment and contempt of court could be issued as potential sanctions under Rule 37(b)(2)(A)).

This caution was not heeded. Plaintiffs reported, in the next Joint Status Report, that Giuliani failed to produce "full and complete responses to plaintiffs' requests for financial information in RFP Nos. 40 and 41[,]" even though the June 22 Order directed him to produce all responsive documents to those requests by June 30, 2023. Aug. 4 JSR at 4–5.[6] According to

[6] According to plaintiffs, Giuliani produced only the following two financial records to plaintiffs: "(1) his 2018 tax returns (federal and New York), and (2) the stipulation of settlement in *Giuliani v. Giuliani*, 350019/2018 (N.Y.

plaintiffs, and undisputed by Giuliani, *see id*. at 10 (Giuliani merely stating that "this point is moot" because he "conceded all aspects of liability on which discovery from him would be necessary"), Giuliani's completed TrustPoint production of 7,949 records consists "almost entirely [of] non-usable, nonresponsive materials," consisting of "approximately 4,142—or more than half—as indecipherable blobs," *id.* at 13. Out of the remaining 3,807 documents, plaintiffs identified only "188 documents that might be relevant to [their] claims" but "63 of those documents consist[ed] of texts with what appear to be wiped bodies," leaving just 124 potentially relevant documents. *Id.* at 13–14. Yet, plaintiffs' counsel identified only "50 or fewer documents" out of those 124 records that were "directly relevant to Plaintiffs' claims," and the majority of those were "unremarkable documents," such as meeting emails querying the location of zoom links or copies of publicly available documents. *Id.* at 14. Giuliani's compliance with the May 31 Order also remained deficient: apart from his 2018 tax returns and the stipulation of settlement from his divorce proceeding in 2019, *see supra* n.6, and the additional documents from 7,949 records from TrustPoint noted above, Giuliani failed to produce *any* additional records responsive to plaintiffs' RFPs since the May 31 Order was entered, including any documents from his electronic devices and sources of discoverable information after April 2021, nor any responsive records from the Giuliani Businesses. *Id.* at 7. Plaintiffs urged that "[t]he Court should sanction . . . [d]efendant Giuliani (including by finding him in contempt of Court) for failure to comply[.]" *Id.* at 5–6; *accord id.* at 8–9, 18, 20.

C. Plaintiffs' Motion to Compel Discovery from the Giuliani Businesses

Though Giuliani attested that he was separately producing his eponymous businesses' records responsive to plaintiffs' RFPs, *see supra* n.5, plaintiffs concomitantly sought discovery

Sup. Ct. Dec. 10, 2019)." Aug. 4 JSR at 5. Giuliani's meager production is plainly deficient given the scope of financial documents responsive to RFP Nos. 40 and 41. *See supra* n.4.

directly from the Giuliani Businesses, but without any response, *see* July 13 Order (making this observation). Consequently, on June 22, 2023, plaintiffs moved to compel the Giuliani Businesses to respond to plaintiffs' properly noticed and served subpoenas for records and testimony, pursuant to Federal Rules of Civil Procedure 45(c)(2)(A) and 30(b)(6). *See* Pls.' Giuliani Businesses Mot. at 1–2. Giuliani and his businesses failed to respond to plaintiffs' Giuliani Businesses Motion. Giuliani, on his businesses' behalf, was given another opportunity to submit a response and directed to show cause why plaintiffs' motion to compel discovery responses from the Giuliani Businesses should not be granted as conceded. *See* July 13 Order. In response, Giuliani stated that he "does not oppose the court's show cause order as to why" plaintiffs' Giuliani Businesses Motion "should not be granted." *See* Def.'s Resp. to July 13, 2023 Show Cause Order at 1, ECF No. 85. Accordingly, plaintiffs' Giuliani Businesses Motion was granted as conceded. *See* Minute Order (July 26, 2023) ("July 26 Order"). Given that he was the sole owner of the Businesses, Third Giuliani Decl. ¶¶ 2-3, and had otherwise failed to secure the Businesses' compliance with plaintiffs' Rule 45 and Rule 30(b)(6) subpoenas or respond to plaintiffs' Businesses Motion, Giuliani was directed personally to pay plaintiffs' their reasonable costs and attorneys' fees incurred in preparing and filing the motion, with the remainder of plaintiffs' requested relief reserved pending resolution of plaintiffs' instant motion for sanctions. July 26 Order.

Even with the requested entry of default against Giuliani, plaintiffs still seek discovery from the Giuliani Businesses "showing metrics and income generated from [Giuliani's show,] *Common Sense*, particularly those episodes that contain" false statements made by Giuliani against plaintiffs, "because such evidence 'is probative of . . . the quantification of damages[,]'" as well as Rule 30(b)(6) depositions from the Businesses, for which "to date Defendant Giuliani has failed to identify a corporate representative." Aug. 4 JSR at 20 (second alteration in original) (quoting

Pls.' Businesses Mot. at 9); *see also* Pls.' Businesses Mot. at 1–2 (noting that plaintiffs served the Giuliani Businesses via their registered agents with Rule 45 subpoenas to produce documents relevant to the litigation and meet and confer to designate corporate representatives for each Business's respective Rule 30(b)(6) deposition, but received no reply).[7]

Plaintiffs timely filed their response to the July 26 Order on August 4, 2023, calculating their total attorneys' fees incurred for the Giuliani Businesses Motion to be $43,684. Pls.' Submission Detailing Costs & Fees Incurred Preparing & Filing Giuliani Businesses Mot. at 9 ("Pls.' Submission"), ECF No. 88. Giuliani raised no objection to the reasonableness or amount of attorneys' fees plaintiffs' requested, but rather contended that he may not be held personally liable for the $43,684 in attorneys' fees "without a proper finding that there is an 'alter ego' and veil piercing can be appropriate" between him and his eponymous businesses, citing the fact that plaintiffs' motion to compel was made against, and only granted as to, his businesses and not Giuliani himself. Def.'s Obj. & Resp. Minute Order Re Attys' Fees ("Def.'s Obj.") at 2, ECF No. 91. Plaintiffs, in response, largely sidestepped the issue of alter-ego liability, instead asking that the July 26 Order be modified "to direct the Giuliani Businesses to comply with the July 26 Order and pay the Fees, which Defendant Giuliani [should be held] personally responsible for ensuring occurs" because Giuliani "failed to cause the Giuliani Businesses to comply with Plaintiffs'

[7] With respect to the document requests from the Giuliani Businesses, plaintiffs request the following information from the Businesses relating to the quantification of damages: (a) "[m]aterials sufficient to show the viewership metrics for and revenue generated from podcast episodes and related social media posts, that included," false statements made by Giuliani concerning plaintiffs and (b) "[i]nformation on how the '*Common Sense*' podcast generates revenue, including through advertising agreements and distribution contracts." Pls.' Giuliani Businesses Mot. at 9. More details about the nature of the financial records and viewership metrics requested from the Giuliani Businesses are provided in plaintiffs' RFP Nos. 19 and 35. *See* Pls.' RFP Chart at 3 ("RFP No. 19: Documents sufficient to summarize viewer and listener metrics for All Your Statements on Social Media and your Podcast, Rudy Giuliani's Common Sense, from the date of original publication through today, including reach, count, page visits, posts, shares, time spent, impressions, and listener numbers."); *id.* at 5 ("RFP No. 35: Documents sufficient to show the number of online views and/or impressions of any of the Actionable Statements about Plaintiffs You made, as described in Amended Complaint at ¶¶ 57-101."). Giuliani has, to date, provided no records in response to these RFPs. *See* Pls.' Giuliani Businesses Mot. at 4 ("Additionally, [Giuliani] has not produced and claims to lack access to documents sufficient to show the viewer and listener metrics for *Common Sense*." (citing RFP Nos. 19, 35)).

subpoenas" as their "sole owner[.]" Pls.' Resp. Def. Giuliani's Obj. & Resp. Minute Order Regarding Attorneys' Fees ("Pls.' Resp.") at 2–4 & n.3, ECF No. 92.

D. Plaintiffs' Pending Motion for Sanctions and Giuliani's Stipulations

In view of Giuliani's deficient discovery compliance, and after Giuliani informed plaintiffs, on July 10, 2023, through counsel, that he "did not agree with the key principles" of a potential settlement agreement negotiated by his attorney, Pls.' Mot. at 14, plaintiffs filed the pending motion "to sanction Defendant Rudolph W. Giuliani . . . for failure to preserve electronic evidence[,]" seeking "severe sanctions[,]" including, *inter alia*, default judgment. *Id.* at 1, 3, 31. In response, Giuliani submitted a personally executed and unsworn stipulation that purports to concede all factual elements of plaintiffs' claims "for the purposes of this litigation." *See generally* Giuliani Stip.[8] At the same time, this stipulation contains the following caveats and limitations undercutting the factual concessions, including that the stipulation (1) "does not affect . . . his argument that his statements are constitutionally protected statements or opinions or [that plaintiffs' claims are barred by] any applicable statute of limitations," Giuliani Stip. ¶¶ 3, 4; and (2) is "subject to any retained affirmative defenses not expressly waived herein," *id.* ¶ 4.

[8] Giuliani's response also included a declaration from Robert J. Costello, Giuliani's counsel in connection with the FBI's seizure of his electronic devices, *see id.*, Decl. of Robert J. Costello ("Costello Decl."), ECF No. 84-1, which along with casting aspersions at plaintiffs' counsel, attempts to rebut the contention that Giuliani intentionally spoliated or destroyed evidence. *Id.* ¶¶ 18, 22. Illuminating in this declaration is the description of the review process applied to the data extracted from Giuliani's seized devices: that extracted data was stored on the government's electronic discovery vendor, called "PAE," *id.* ¶¶ 6-7, and then funneled for privilege review through a special master, who would "contact [Costello] and inform [him] that she would provide and make preliminary claims of privilege for any electronic document provided[,]" and those documents identified by the special master "would be provided directly . . . to [Costello's] designated electronic discovery vendor, Trustpoint," *id.* ¶¶ 11-14. This process, as described in the Costello Declaration, suggests, for the first time that TrustPoint held merely a subset, rather than all, of the records on Giuliani's seized electronic devices, which is inconsistent with Giuliani and his counsel's repeated representations in this case that the TrustPoint dataset contains *all* data on his seized devices. In any event, the Costello Declaration indicates that of "more than the 95 percent of the electronic materials" reviewed on TrustPoint, Costello cannot "recall any mention of either Plaintiff [sic] in all of the materials that [he] reviewed[,]" *id.* ¶ 16, though whatever reassurance that is supposed to provide is severely undercut by the fact that the responsive information to the warrant was limited in time to August 1, 2018 to December 31, 2019, many months prior to the events relevant to plaintiffs' claims, *id.* ¶ 6. When the devices were finally returned to Giuliani, the Costello Declaration repeats Giuliani's assertion that all the devices "had been wiped clean by the vendor for the Government," *id.* ¶ 19, but without any verification of this fact by any expert forensic examiner or even a professional information technology professional.

"Given the seemingly incongruous and certainly puzzling caveats contained in the Giuliani Stipulation," this Court directed Giuliani to provide a superseding stipulation, in which "he concedes, for purposes of this litigation, all factual allegations in plaintiffs' Amended Complaint as to his liability for plaintiffs'" claims and liability for punitive damages, and "concedes that entry of default judgment on liability is appropriate in this case[,]" or provides "an explanation for declining to submit the superseding stipulation[.]" Minute Order (Aug. 4, 2023). The Superseding Giuliani Stipulation remains nearly as puzzling as his first, however. Again, Giuliani concedes "for purposes of this litigation only, all factual allegations in Plaintiffs' Amended Complaint as to his liability—but not for damages allegedly caused by him—for Plaintiffs' defamation, intentional infliction of emotional distress, and civil conspiracy claims, and his liability as to Plaintiffs' claim for punitive damages." Superseding Giuliani Stip. ¶ 5. Yet, Giuliani again asserts that he "believes he has legal defenses to this Complaint that he seeks to preserve[,]" including "his arguments that the statements complained of are protected and non-actionable opinion for purposes of the appeal." *Id.* at 1 & ¶¶ 5-6.

With the filing of plaintiffs' reply in support of their sanctions motion, *see* Pls.' Reply Supp. Mot. ("Pls.' Reply"), ECF No. 86, and in support of reimbursement of attorneys' fees and costs associated with the filing of plaintiffs' Giuliani Businesses Motion, *see* Pls.' Resp., these motions are now ripe for resolution.

II. APPLICABLE PROCEDURAL RULES

The Federal civil procedural rules authorize the imposition of sanctions for the failure by a party to a civil lawsuit to preserve ESI and to comply with a court's discovery orders. *See* FED. R. CIV. P. 37(b) and (e). Both types of failure are implicated here.

A party to federal litigation that is either anticipated or pending is required to preserve potentially relevant evidence. When "[ESI] that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery," a court may "order measures no greater than necessary to cure the prejudice." FED. R. CIV. P. 37(e)(1). "This misconduct, also known as spoliation, is 'the destruction or material alteration of evidence or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation.'" *Bethel v. Rodriguez*, No. CV 20-1940 (RC), 2022 WL 2157065, at *2 (D.D.C. Jun. 15, 2022) (quoting *Nunnally v. Dist. of Columbia*, 243 F. Supp. 3d 55, 73 (D.D.C. 2017)). Upon a finding "that the party acted with the intent to deprive another party of the information's use in the litigation," a court is empowered to impose serious sanctions, including "presum[ing] that the lost information was unfavorable to the party; . . . instruct[ing] the jury that it may or must presume the information was unfavorable to the party; or . . . dismiss[ing] the action or enter[ing] a default judgment." FED. R. CIV. P. 37(e)(2).

Similarly serious sanctions and "just orders" are authorized "[i]f a party . . . fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a). . . ." FED. R. CIV. P. 37(b)(2)(A). The sanctions expressly authorized for such a violation including: "(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims[;] . . . (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey." *See* FED R. CIV. P. 37(b)(2)(A)(i)–(vii). Additionally, "[i]nstead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was

substantially justified or other circumstances make an award of expenses unjust." FED. R. CIV. P. 37(b)(2)(C).

III. DISCUSSION

Plaintiffs contend that the sanction of entry of default is warranted for Giuliani's failures (1) to preserve ESI; (2) to respond fully to plaintiffs' RFPs; and (3) to pay plaintiffs' attorneys' fees and costs for their first motion to compel, as required by the Discovery Orders. In considering whether this severe sanction of default is appropriate, under Rule 37, Giuliani's willingness to fulfill his discovery obligations is key. Both Giuliani stipulations make crystal clear his choice not to provide further discovery. Where the discovery deficiencies are, as here, significant, with no sign of improvement in the production of responsive information, which may be forever lost due to a failure to preserve ESI, the obvious unfairness to the plaintiffs in frustrating their ability to obtain relevant evidence both to support their claims and rebut any defenses proffered by Giuliani makes entry of default judgment necessary.

Additionally, plaintiffs' requested discovery relief from the Giuliani Businesses will be granted, and, as plaintiffs request—despite Giuliani's attestation that Giuliani Partners LLC has "No assets" and Giuliani Communications LLC has only media equipment assets, Third Giuliani Decl. ¶¶ 10-11—the Businesses themselves will be ordered to reimburse plaintiffs' attorneys' fees incurred in connection with the Businesses Motion, with Giuliani directed to ensure their compliance.

A. Rule 37(e) Sanctions

Spoilation sanctions under Rule 37(e) are warranted when "(1) [ESI] should have been preserved in the anticipation or conduct of litigation; (2) a party failed to take reasonable steps to preserve the ESI; (3) ESI was lost as a result; and (4) the ESI could not be restored or replaced by

additional discovery." *Doe v. Dist. of Columbia*, No. 1:19-CV-01173 (CJN), 2023 WL 3558038, at *12 (D.D.C. Feb. 14, 2023) (cleaned up); *accord Skanska USA Civ. Se. Inc. v. Bagelheads, Inc.*, No. 21-13850, 2023 WL 4917108, at *12 (11th Cir. Aug. 2, 2023) (explaining that the preconditions for imposing Rule 32(e) sanctions are as follows: "(1) 'electronically stored information that should have been preserved in the anticipation or conduct of litigation' was 'lost because a party failed to take reasonable steps to preserve it' and (2) that information 'cannot be restored or replaced through additional discovery'") (quoting FED. R. CIV. P. 37(e)); *Bethel*, 2022 WL 2157065, at *3; *Ball v. George Washington Univ.*, No. 17-cv-0507 (DLF), 2018 WL 4637008, at *1 (D.D.C. Sept. 27, 2018); *see also Borum v. Brentwood Vill.*, LLC, 332 F.R.D. 38, 43 (D.D.C. 2019) (noting that the party alleging spoliation bears the burden of proof). As discussed below, plaintiffs have demonstrated that the four prerequisites for imposing Rule 37(e) sanctions are satisfied.

1. Giuliani Should Have Preserved Electronic Evidence in Anticipation of this Litigation by "Early 2021"

First, as plaintiffs correctly argue, Pls.' MTC at 17, Giuliani should have preserved his ESI well before the filing of this lawsuit. "Once a party anticipates litigation, it must preserve potentially relevant evidence that might be useful to an adversary." *Borum*, LLC, 332 F.R.D. at 45; *accord Nunnally*, 243 F. Supp. 3d at 73; *Montgomery v. Risen*, 197 F. Supp. 3d 219, 245 (D.D.C. 2016); *Zhi Chen v. Dist. of Columbia*, 839 F. Supp. 2d 7, 12 (D.D.C. 2011). Giuliani admits, in his Second Declaration, that he received "notice of potential litigation issues surrounding [his] involvement in contesting the 2020 Election in late 2020 or early 2021." Second Giuliani Decl. ¶ 2. His duty to preserve ESI relevant to plaintiffs' claims thus began at least by early 2021, well before plaintiffs filed suit in December 2021 and likely before the FBI seized his electronic devices in April 2021. *See also* May 19 Hrg. Tr. at 67:23–68:1 ("I have about 20

preservation orders, much of which overlaps with theirs . . . So I started, you know, preserving from way before their case."). Thus, Giuliani had a duty to preserve potentially relevant ESI on the Giuliani Devices and Giuliani Communications Accounts by at least early 2021.

2. Giuliani Did Not Take Reasonable Steps to Preserve His ESI

Second, plaintiffs argue that Giuliani's efforts to preserve his ESI—turning off autodelete at some unidentified date on an unenumerated number of his Devices and Communications Accounts—were not reasonable. Pls.' MTC at 17–19. "The scope of a party's preservation obligation can be described as follows: Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant documents." *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003); *accord Borum*, 332 F.R.D. at 45 ("A party 'must . . . put in place a litigation hold to ensure the preservation of relevant documents' when it 'reasonably anticipates litigation.'") (alterations in original) (quoting *Nunnally*, 243 F. Supp. 3d at 73); *DR Distribs., LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 931 & n.41–42 (N.D. Ill. 2021) (collecting cases and scholarship). With respect to preserving ESI on phones or other electronic devices, courts have normally held that litigants must prevent destruction of ESI on such devices by backing up the data to that device's cloud network. *See, e.g.*, *Fast v. GoDaddy.com LLC*, 340 F.R.D. 326, 344 (D. Ariz. 2022) ("By failing to back up her iPhone, Plaintiff failed to take reasonable steps to preserve the ESI contained on the phone."); *Youngevity Int'l v. Smith*, No. 3:16-cv-704-BTM-JLB, 2020 WL 7048687, at *2 (S.D. Cal. Jul. 28, 2020) ("The Relevant Defendants' failure to prevent destruction by backing up their phones' contents or disabling automatic deletion functions was not reasonable because they had control over their text messages and should have taken affirmative steps to prevent their destruction when they became aware of their potential relevance."); *Laub v.*

Horbaczewski, No. CV 17-6210-JAK (KS), 2020 WL 9066078, at *6 (C.D. Cal. July 22, 2020) (similar); *Paisley Park Enters., Inc. v. Boxill* ("*Paisley Park*"), 330 F.R.D. 226, 233 (D. Minn. 2019) (holding that defendants did not take reasonable steps to preserve ESI on their phones because they "could have taken advantage of relatively simple options to ensure that their text messages were backed up to cloud storage" but did not do so); *Brewer v. Leprino Foods Co., Inc.*, No. CV-1:16-1091-SMM, 2019 WL 356657, at *10 (E.D. Cal. Jan. 29, 2019) (similar).

Plaintiffs are right that Giuliani did not take reasonable efforts to preserve his ESI. Giuliani's summary of his preservation efforts amounted to turning off auto-delete at some time "in late 2020 or early 2021" on his unenumerated and unspecified "email, messaging, communication, or other document storage platforms" and refraining from manually deleting "any electronic documents or dispose[] of any paper files." Second Giuliani Decl. ¶ 2. Yet, Giuliani seems completely unable to provide any details, let alone confirmation, as to what precise steps he took and when, as to each of his individual Devices and Communications Accounts to preserve ESI. As plaintiffs correctly point out, Giuliani's representation in his Second Declaration "lacks the kind of details that would make it worthy of credit—he has not explained *which* of his accounts had auto delete functions on them, how he turned them off (if so) or when, whether he did so or tasked someone else to do so, and whether he sought to recover any records (from his various online accounts) confirming these changes." Pls.' MTC at 18 (emphasis in original). Nor has Giuliani clarified the scope of his preservation efforts in his opposition to plaintiffs' motion. *See generally* Def.'s Mot. Resp., ECF No. 84. Especially given the shifting descriptions of the contents in the TrustPoint dataset, *see supra* n.8, and the vague nature of the "manual" searches he performed in response to plaintiffs' RFPs, Giuliani's statement that he turned off auto-delete on his "email, messaging, communication, or other document storage platforms" lacks sufficient

corroborating detail to evince that he turned off all auto-delete functions on *each* of the Giuliani Devices and Communications Accounts.

Second, even viewing the Second Giuliani Declaration in its best light, merely turning off auto-delete on each of the Giuliani Devices and Giuliani Communications Accounts is also insufficient to comply with his Rule 37(e) obligations. Giuliani could have, but chose not to, take any other reasonable steps to preserve his ESI, such as backing up his iMessage communications on the Giuliani Devices to his iCloud account, downloading the contents of his other messaging and email applications enumerated in his list of Giuliani Communications Accounts onto an external storage device or confirming that the contents of communications on those platforms were preserved on the cloud, or otherwise engaging an expert to preserve the material that existed outside of his physical devices. *See* Pls.' Reply at 12 (making these observations); *see also Doe*, 2023 WL 3558038 at *14 (explaining that the non-moving party "failed to fulfill its obligations by a long shot" because it adduced "no evidence of preservation efforts beyond the partial distribution of litigation hold notices").

The fact that Giuliani is a sophisticated litigant with a self-professed 50 years of experience in litigation—including serving as the U.S. Attorney for the Southern District of New York—only underscores his lackluster preservation efforts. *See* FED. R. CIV. P. 37 (advisory committee note to 2015 amendment) (noting that courts "should be sensitive to the party's sophistication with regard to litigation in evaluating preservation efforts; some litigants, particularly individual litigants, may be less familiar with preservation obligations than others who have considerable experience in litigation"). Giuliani knew, by his own admission, that he would be facing litigation for his involvement in claiming election fraud to undermine the results of the 2020 presidential election, and yet, all he did was turn off the auto-delete function on unspecified

devices, without alerting the service providers of those platforms to do the same, Giuliani Dep. Tr. at 28:9–16 (Giuliani testifying that he does not "have any recollection" going "back to WhatsApp or Signal . . . to ask them for a pull of any of [his] data"), and taking any other efforts to preserve or retrieve ESI on those accounts or devices. Accordingly, Giuliani failed to take reasonable steps to preserve potentially relevant ESI.

In opposition, Giuliani does not seriously contest that he failed to take reasonable preservation efforts. Indeed, he fails to address, and therefore concedes, that he took no other steps to preserve his ESI on the Giuliani Devices and Giuliani Communications Accounts. *See generally* Def.'s Mot. Resp. Citing the Costello Declaration, Giuliani instead lays blame at the feet of the government, arguing that, after the FBI seized Giuliani's electronic devices, a government vendor extracted data from those devices for uploading to PAE, and, in so doing, corrupted the data and also "wiped" any ESI on Giuliani's pre-April 2021 devices. *See id.* at 3–4; *see also supra* n.8.

Giuliani's efforts to shift blame to the government does not withstand scrutiny. The Costello Declaration suggests the following critical points: first, that the government's vendor, PAE, not TrustPoint, contains the full extractions, or images, of the Seized Devices and thus any pre-April 2021 ESI stored on those devices, *see* Costello Decl. ¶¶ 11-14; second, that data was only transferred to TrustPoint to facilitate Costello's review for potential privilege claims at the direction of the court-appointed special master, who identified responsive but potentially privileged information to the warrant, which was focused on potential FARA violations limited in time to August 1, 2018 to December 31, 2019, *id.* ¶ 6; and, finally, that the data transferred by PAE to TrustPoint was not, in fact, *all* corrupted since Costello states that he was able to "designate" certain communications that he "believed were covered by attorney client, work product or executive privilege" for the special master to review, *id.* ¶ 15. These points made in

the Costello Declaration casts doubt on Giuliani's descriptions of the TrustPoint dataset, which Giuliani has steadfastly maintained contains the entire repository of his pre-April 2021 ESI. *See, e.g.,* Second Giuliani Decl. ¶ 4 ("The TrustPoint One documents consist of all documents that were extracted from the electronic devices taken by the DOJ in April 2021 when the DOJ seized those devices[.]"); Def.'s MTC Resp. at 4; Mar. 21 Hrg. Tr. 18:9–21. In any event, even had the government corrupted, wiped, or otherwise lost his pre-April 2021 ESI stored on the Seized Devices, Giuliani's reliance on the government's execution of a search warrant as the most significant preservation effort taken to preserve his pre-April 2021 data only confirms that Giuliani did not, himself, engage in reasonable steps to preserve his pre-April 2021 ESI, such as backing-up this data in a manner to facilitate both preservation and searches for responsive records in this lawsuit. Simply put, the government is not Giuliani's ESI preservation team, and the FBI's seizure of Giuliani's electronic devices did not obviate his obligation to take additional preservation efforts before and after the seizure.

The Costello Declaration undermines Giuliani's position in two other respects. First, the Costello Declaration settles that, prior to plaintiffs' filing of this lawsuit, Giuliani and Costello knew the TrustPoint dataset—whether or not this dataset encompassed all his pre-April 2021 ESI on his Seized Devices and Giuliani Communications Accounts—contained some corrupted files but did not ever attempt to preserve or recover, or coordinate with PAE or TrustPoint or the platforms hosting the Communications Accounts to preserve or recover, any of that ESI. Second, even if the government "wiped" Giuliani's Seized Devices as Giuliani and Costello assert, that assumption says nothing about Giuliani's Unseized Devices, and does not explain why Giuliani can no longer access ESI in the Giuliani Communications Accounts, since he would be able to access that data on the cloud networks for each Account had he taken reasonable steps to preserve

the ESI on those Accounts. Given Giuliani's much-vaunted experience as an attorney, he plainly should have known better, and had he taken the proper steps prior to or even after the FBI's seizure of his devices, his potentially relevant ESI could have been preserved. *See Doe*, 2023 WL 3558038, at *14 ("Had the District taken appropriate measures to protect ESI in this case, many lost text messages would still be available."); *DR Distribs.*, 513 F. Supp. 3d at 934 (explaining that if the spoliating party had taken reasonable steps to preserve ESI "when the duty to preserve arose, [the] ESI would more likely not have been deleted").

3. Giuliani's ESI Is Now Irretrievable

Plaintiffs argue that the third requirement for a finding of spoliation is met because Giuliani's pre-April 2021 ESI is irremediably lost. *See* Pls.' Mot. at 19–21. Giuliani has conceded as much as to his Seized Devices, *see* Def.'s Mot. Resp. at 5 (indicating that his Seized Devices returned by the FBI were "wiped clean"), and, in any event, has stated that he need not produce any additional discovery because "he has conceded all aspects on liability on which discovery form him would be necessary." Aug. 4. JSR at 10. ESI is irretrievable when it "cannot be restored or replaced through additional discovery." *Borum*, 332 F.R.D. at 46; *accord* FED. R. CIV. P. 37(e) (advisory committee's note to 2015 amendment) ("Because [ESI] often exists in multiple locations, loss from one source may often be harmless when substitute information can be found elsewhere."). In *Borum*, for example, an employee's emails were deemed "irremediably lost" because the company admitted it lost its own copies of the employee's emails, the employee likely sent emails to only external parties without copying another employee, and "no amount of discovery w[ould] confirm the extent to which information was lost." 332 F.R.D. at 46. Similarly, Giuliani has repeatedly admitted that his ESI has either been "wiped" from the Seized Devices, or that he has lost access to his Communications Accounts that would contain potentially responsive

ESI. *See* Giuliani Dep. Tr. at 391:23–392:11 (Giuliani explaining that the devices the government has given back to Giuliani "seems to be wiped out" and that he "can't get anything off" of those devices); May 19 Hrg. Tr. at 53:4–8, 95:17–97:8 (Giuliani noting that "90 to 95 percent of [his] communication is done on Apple, and it's backed up by the iCloud," but he does not "have access to [ ] the cloud" anymore, without explaining why); *see also id.* at 96:8–18 (Giuliani stating "Did they destroy it? I don't know," referring to the FBI). Nor has Giuliani shown that any of his potentially responsive ESI on the Giuliani Devices and Giuliani Communications Accounts can be retrieved through alternative means, *see generally* Def.'s Mot. Resp., so his ESI may be deemed irretrievably lost.

4. Rule 37(e)(2) Sanctions Are Warranted

Given that the threshold requirements of Rule 37(e) are satisfied, the only issue left to decide is whether sanctions under 37(e)(1) or (e)(2) are warranted. Rule 37(e) authorizes district courts to (1) "order measures no greater than necessary to cure the prejudice," or (2) upon finding "that the party acted with the intent to deprive another party of the information's use in the litigation," then "presume that the information was unfavorable to the party;" "instruct the jury that it may or must presume the information was unfavorable to the party; or" "dismiss the action or enter a default judgment." FED. R. CIV. P. 37(e); *see also Borum*, 332 F.R.D. at 46–47 ("Under Rule 37(e)(1), the Court may impose proportional sanctions upon the finding of prejudice. Under Rule 37(e)(2), the Court may impose more severe sanctions upon finding that the party that lost the information acted with the intent to deprive another party of the information's use in the litigation."). Based on the record outlined above, Rule 37(e)(2) sanctions are warranted here.

a. Plaintiffs Have Been Prejudiced by Giuliani's Failure to Preserve ESI

Plaintiffs argue that they have been severely prejudiced by Giuliani's failure to preserve his ESI by hampering their "ability to learn what he knew or did not know—including what information he received, and what he did or did not do in response to that information—when he published his defamatory claims." Pls.' Mot. at 21–22. "To evaluate prejudice from the loss of ESI, courts consider 'the information's importance in the litigation.'" *Doe*, 2023 WL 3558038, at *14 (quoting FED. R. CIV. P. 37(e)(1) (advisory committee's note to 2015 amendment)). "The extent of prejudice in a given case 'ranges along a continuum from an inability to prove claims or defenses to little or no impact on the presentation of proof.'" *Id.* (quoting *Borum*, 332 F.R.D. at 47). Furthermore, "Rule 37(e) 'leaves judges with discretion to determine how best to assess prejudice in particular cases' and where to allocate the burden of proving prejudice." *Id.* (quoting FED. R. CIV. P. 37(e) (advisory committee's note to 2015 amendment)).

Giuliani's ESI is relevant to all of plaintiffs' claims. First, as explained in *Freeman*, if plaintiff Ruby Freeman is a limited-purpose public figure as Giuliani argued, she would have to show that Giuliani's statements about her were made with actual malice, which would require Freeman to prove that Giuliani published false statements concerning her "with knowledge that it was false or with reckless disregard of whether it was false or not." 2022 WL 16551323, at *9 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). Whether Freeman was a limited-purpose public figure was not resolved in that decision, but if she were, plaintiffs would have to prove that Giuliani made the false statements about her with an "awareness of falsehood," *Herbert v. Lando*, 441 U.S. 153, 170 (1979), meaning that they would have "to prove the defendant's state of mind through circumstantial evidence," *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 668 (1989). Without access to circumstantial evidence of Giuliani's state of mind—in the form of his messages and email communications with associates or other contemporaneous records

of his thoughts when he made the false statements against Freeman—plaintiffs are severely hampered in being able to refute Giuliani's defense that he made his statements about Freeman merely negligently.

Second, plaintiffs' claim for Intentional Infliction of Emotional Distress ("IIED") requires a preponderance of proof that Giuliani engaged in "(1) extreme and outrageous conduct . . . which (2) intentionally or recklessly (3) cause[d] [them to suffer] severe emotional distress." *Freeman*, 2022 WL 16551323, at *10 (quoting *Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1269 (D.C. 2015)). Similar to Giuliani's public-figure defense to Freeman's defamation claim, plaintiffs will be severely hampered in proving that Giuliani acted intentionally or recklessly without access to circumstantial evidence of his state of mind when he made allegedly false statements about them.

Finally, to prevail on their civil conspiracy claim, plaintiffs must prove, *inter alia*, "(1) an agreement between two or more persons (2) to participate in an unlawful act," *id.* (quoting *Paul v. Howard Univ.*, 754 A.2d 297, 310 (D.C. 2000)). Such proof rests on evidence that Giuliani worked with others to defame and inflict emotional distress on plaintiffs, but, due to Giuliani's failure to preserve and produce his communications with others concerning plaintiffs and the surrounding context, plaintiffs are, again, severely hampered in establishing this claim.

Plaintiffs have also shown, through discovery obtained from third parties, that had Giuliani properly satisfied his preservation and production obligations, he should be in possession of documentary evidence that goes to the heart of claims in this lawsuit. For instance, plaintiffs received, not from Giuliani, but from third-party Christina Bobb, responsive records, including: (1) a text thread between Bobb and Giuliani discussing sending a video of plaintiffs to Rusty Bowers, then the Speaker of the Arizona House of Representatives, Pls.' Reply Supp. MTC, Decl.

of Meryl Governski, Ex. 2, December 4, 2020 Text Message Thread between Giuliani and Christina Bobb, ECF No. 56-3; (2) a direct message between Giuliani and Bobb on Instagram concerning plaintiffs, *id.*, Ex. 3, August 17, 2022 Instagram Message between Bobb and Giuliani, ECF No. 56-4; and (3) a text thread between Boris Epshteyn, an advisor to the 2020 Trump Campaign, and Giuliani and others, in which Epshteyn states, "Urgent POTUS request need best examples of 'election fraud' that we've alleged that's super easy to explain. Doesn't necessarily have to be proven, but does need to be easy to understand[,]" to which Giuliani replies, "The security camera in Atlanta alone captures theft of a minimum of 30,000 votes which alone would change result in Georgia[.] Remember it will live in history as the theft of a state if it is not corrected by State Legislature[,]" Gottlieb Decl., Ex. 11 at 2, 4, Dec. 7, 2020 Text Message Thread between Epshteyn, Giuliani, and Others, ECF No. 81-12.

Plaintiffs also received, not from Giuliani, but from third-party Christianne Allen, one of Giuliani's assistants, responsive records, including a December 7, 2020, email from a Fox News reporter to "press@giulianipartners.com," seeking a comment from Giuliani regarding the Georgia Secretary of State Chief Investigator's debunking of Giuliani's claim that plaintiffs were pulling suitcases filled with mystery ballots from under tables while tabulating the votes on election night, *see* Pls.' Opp'n, Decl. of M. Anne Houghton-Larson ("Houghton-Larson Decl."), Ex. 6, December 7, 2020 Email from Ronn Blitzer to "press@giulianipartners.com," ECF No. 64-7.

According to plaintiffs, none of these communications were produced by Giuliani, who has claimed no privilege over these communications. Gottlieb Decl. ¶¶ 3-4. Additionally, plaintiffs say they "have additional examples of relevant documents and communications obtained from third parties that were not produced by Defendant Giuliani." *Id.* ¶ 5.[9]

[9] Indeed, the U.S. House of Representatives' Select Committee to Investigate the January 6th Attack on the U.S. Capitol released a December 13, 2020, email from Giuliani to Epshteyn, in which Giuliani approved a draft

Testimony from Giuliani and third parties also suggests that responsive, but now either lost or certainly not produced, ESI should exist in the Giuliani Communications Accounts and on the Giuliani Devices. For example, Giuliani testified that he "talked to many people" who said that poll observers were excluded from the State Farm Arena in Fulton County, Georgia on election night in 2020 and that "there were constant complaints about that." Giuliani Dep. Tr. at 352:22–353:21. Bobb similarly testified that Giuliani was "getting like 10,000 emails a day" during the time period in which Giuliani was challenging the results of the 2020 election, and that she was copied on certain incoming emails to ensure that those emails were brought to Giuliani's attention. *See* Gottlieb Decl., Ex. 5, May 16, 2023 Dep. Tr. of Christina Bobb at 40:16–41:21, ECF No. 81-6. Additionally, Bernard Kerik, a key investigator for Giuliani, testified that Giuliani and his team were receiving reports of possible fraud from "a hundred different sources" during the November and December 2020 time period with "tons of information" coming to Giuliani and his team. *Id.*, Ex. 6, Mar. 20, 2023 Dep. Tr. of Bernard Kerik at 47:12–48:7, ECF No. 81-7. Little to none of those estimated thousands of emails from "a hundred different sources" have been produced to plaintiffs by Giuliani.

Giuliani's failure to preserve his ESI has significantly prejudiced plaintiffs' abilities to prove their claims because circumstantial evidence of Giuliani's knowledge of the falsity of his claims concerning plaintiffs likely would have existed in his lost ESI. Unfortunately, as plaintiffs

statement from the Trump Legal Team that stated, "Georgia has video evidence of 30,000 illegal ballots cast after the observers were removed[,]" referencing Giuliani's false claim made about plaintiffs. Pls. Reply Supp. MTC, Governski Decl., Ex. 6 at 3, Dec. 13, 2020 Email from Giuliani to Epshteyn, ECF No. 56-7. Yet, Giuliani never produced that email to plaintiffs nor, as far as plaintiffs' counsel can discern, did he ever claim privilege over it. Gottlieb Decl. ¶ 4. In defense, Giuliani argues that just because third parties, but not Giuliani, were able to produce responsive records "does not prove [he] had any access to those same materials and lost or destroyed them." Def.'s MTC Resp. at 5. To be sure, missing some responsive documents or communications does not in itself prove spoliation, but the record here, with multiple third parties all producing responsive communications with Giuliani that he failed to produce, certainly demonstrates the deficiencies in his preservation of ESI and/or search methodology.

point out, one "cannot accurately assess the full scope of the evidence that has been lost," Pls.' Mot. at 38, but the third-party discovery and testimony from Giuliani, Bobb, and Kerik suggests that evidence concerning when Giuliani obtained information relevant to his statements about plaintiffs, how he investigated, verified, presented and characterized such information to others, and how he pushed that information to others likely existed, even if not currently extant, on his Devices and in his Communications Accounts.

b. Giuliani Intended Not to Take Reasonable Steps to Preserve His ESI

Finally, plaintiffs persuasively argue that the only reasonable explanation for Giuliani's failure to take any reasonable preservation steps "is that he did so deliberately to deny Plaintiffs (and the scores of other plaintiffs and government entities litigating and investigating his actions during and after the 2020 Presidential Election) evidence that would be helpful to their case." Pls.' Mot. at 29–30. Despite repeated requests for details about his preservation efforts—by plaintiffs' counsel on December 21, 2022 and February 6, 2023, and at Giuliani's deposition, *see* Giuliani Dep. Tr. at 25:19–26:8, as well as by this Court at both the March 21 and May 19 Hearings and in the May 19 Order—Giuliani finally answered that the only preservation effort he took was to turn off auto-delete on an unenumerated list of devices and possibly on his Communications Accounts. Unlike large institutional or corporate defendants that may be responsible for the ESI of multiple employees, *cf. Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 432 (S.D.N.Y. 2004) (explaining that a corporate party's counsel must be "creative" to satisfy the party's preservation obligations "given the size of a company or the scope of a lawsuit"), Giuliani was the only individual responsible for preserving his ESI, and unlike other cases with unsophisticated litigants, Giuliani has been a practicing attorney for "50 years" and admits that he "understand[s] the obligations," May 19 Hrg. Tr. at 67:21–68:6. The only reasonable explanation for Giuliani's blatant disregard

for satisfying his preservation obligations—despite fully understanding them—is that he intentionally and willfully ignored them. *See Beck v. Test Masters Educ. Servs., Inc.*, 289 F.R.D. 374, 378 (D.D.C. 2013) (holding that party's failure "to make any serious effort to recover the data" was sufficient to demonstrate "a conscious disregard of [their] preservation obligations"). Accordingly, Giuliani's failure to preserve potentially relevant ESI warrants Rule 37(e)(2) sanctions, including entry of default against him.

B. Rule 37(b) Sanctions

Giuliani has also failed to comply with other court-ordered discovery obligations. *See generally* Aug. 4 JSR. Rule 37(b)(2)(A) specifically authorizes district courts to "issue further just orders" "[i]f a party . . . fails to obey an order to provide or permit discovery," including "(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims[;] . . . (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey." *See Parsi v. Daioleslam*, 778 F.3d 116, 130 (D.C. Cir. 2015) (explaining that courts also have the "inherent power" to impose sanctions for violating a court order, including "contempt citations, fines, awards of attorneys' fees, and such other orders and sanctions as they find necessary, including even dismissals and default judgments") (citation omitted). "The rule 'requires the moving party to demonstrate . . . (1) [that] there is a discovery order in place, and (2) that the discovery order was violated.'" *Saravia v. Yuan Profit, Inc.*, No. CV 20-232 (RDM), 2023 WL 2585675, at *3 (D.D.C. Mar. 17, 2023) (alterations in original) (quoting *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, 292 F.R.D. 53, 56 (D.D.C. 2013)); *see also Webb v. District of Columbia*, 146 F.3d 964, 971 (D.C. Cir. 1998) ("A district court may order sanctions, including a default judgment . . . for violation of a discovery order[.]"). As outlined above, *see supra* Section I.B, Giuliani's most flagrant violation

of this Court's Discovery Orders is that he has not, as required by the May 31 Order, "search[ed] and produce[d] all materials responsive to plaintiffs' RFPs, with the exception of RFPs 40 and 41, within the date ranges agreed to by the parties, with the assistance of a professional vendor, and produce a privilege log specifically tailored to the searches he has performed for materials responsive to plaintiffs' RFPs." August 4 JSR at 7–8. As discussed *infra* in Section III.C.3, Giuliani has also failed to comply with two other Discovery Orders: the June 22 Order, which denied his motion for reconsideration and directed him to produce fulsome responses to plaintiffs' RFPs. 40 and 41 regarding his financial records, and his obligation under the July 13 Order to pay plaintiffs' $89,172.50 in attorneys' fees and costs associated with their motion to compel. *Id.* at 4–6, 17–18. Giuliani never sought an accommodation or a stay of, or otherwise contested, his obligations under the June 22 and July 13 Orders.

Giuliani's only defense to his failure to comply with the May 31 Order is that "this point is moot since he has conceded all aspects of liability on which discovery from him would be necessary." *Id.* at 10. Yet, Giuliani has provided no authority for his position that filing a stipulation, conceding liability with one hand, while, on the other hand, still contesting such liability by reserving certain legal arguments for appeal and preserving all affirmative defenses, operates as an effective concession of liability or otherwise obviates his need to comply with the May 31 Order.

For the above reasons, Giuliani's discovery failures warrant severe sanctions under Rule 37(b)(2).

C. Sanctions and Other Discovery Relief

Giuliani has failed to comply with his core obligations under Rules 26 and 37: preserve and produce relevant ESI. Citing Giuliani's willful failure to preserve potentially relevant ESI,

and his knowing disregard for his discovery obligations, plaintiffs argue that default judgment is an appropriate sanction in this case. Pls.' Mot. at 31–32. Plaintiffs also seek attorneys' fees and costs associated with their instant motion as a sanction for his failure to preserve ESI, and further request that Giuliani be held in contempt for failing to comply fully with both the June 22 Order, which required production of responses to plaintiffs' RFPs 40 and 41, and the July 13 Order, which required reimbursement of plaintiffs' attorneys' fees and costs associated with their motion to compel filed on April 17, 2023, by July 25, 2023. Aug. 4 JSR at 4–6, 17–18. Apart from discovery sanctions, plaintiffs seek, with respect to the Giuliani Businesses, (1) production of the Businesses' requested records relevant to quantification of damages, (2) identification by Giuliani of a corporate representative on behalf of the Giuliani Businesses to sit for a deposition pursuant to Federal Rule of Civil Procedure 30(b)(6), *id.* at 20, and (3) modification of the July 26 Order that would direct the Giuliani Businesses to pay plaintiffs' attorneys' fees in the amount of $43,684, and hold Giuliani directly liable only if his eponymous businesses do not comply, Pls.' Resp. at 2–3.

As explained in more detail below, plaintiffs are right that, under either or both Rules 37(e)(2) and (b)(2), entry of default judgment is the most appropriate sanction in this case. In addition, Giuliani's continued noncompliance, without excuse or explanation, with the June 22 Order directing his complete responses to RFPs 40 and 41, will be sanctioned by precluding him from relying on any assets or net worth documentation not turned over by September 20, 2023 and by issuance of adverse instructions at the trial on plaintiffs' damages.[10] Plaintiffs' request for

[10] Plaintiffs urge that Giuliani be held in contempt and subject to a daily financial sanction, accruing interest, until he fully complies with the June 22 and July 13 Orders. Aug. 4 JSR at 5 & n.3, 18. Imposing escalating monetary fines on Giuliani, particularly when he has already shown a recalcitrance to comply with Court orders, will do little more than delay the resolution of this defamation case that heads to trial solely on the issue of damages. Moreover, such fines would also not be payable to plaintiffs but rather imposed as an escalating fine against Giuliani, payable to the Clerk of the Court, to secure his compliance, *see In re Sealed Case*, No. 23-5044, 2023 WL 5076091, at *12 (D.C. Cir. July 18, 2023) (outlining process for levying a civil contempt sanction to secure compliance with a court order),

attorneys' fees and costs associated with filing the instant motion will be granted, which fees and costs—in addition to the $89,172.50 Giuliani already owes plaintiffs for their first motion to compel, plus interest accrued since July 25, 2023—will be added onto the final judgment against Giuliani. Finally, plaintiffs are entitled to the requested records from the Giuliani Businesses and a limited 30(b)(6) deposition from the Giuliani Businesses, and the July 26 Order will be modified to hold the Businesses liable for the attorneys' fees owed in connection with their Giuliani Businesses Motion, with Giuliani to be held directly liable should his eponymous businesses not comply.

1. Plaintiffs Are Entitled to Entry of Default Judgment under Rules 37(e)(2)(C) and (b)(2)(A)(vi)

Plaintiffs seek entry of default judgment against Giuliani for his violation of his discovery obligations. Pls.' Mot. at 31–33. "[T]hree basic justifications . . . support the use of dismissal or default judgment as a sanction for misconduct." *Webb*, 146 F.3d at 971. "First, the court may decide that the errant party's behavior has severely hampered the other party's ability to present his case," i.e., "that the other party 'has been so prejudiced by the misconduct that it would be unfair to require him to proceed further in the case.'" *Id.* (quoting *Shea v. Donohoe Constr. Co.*, 795 F.2d 1071, 1074 (D.C. Cir. 1986)). A second justification is "the prejudice caused to the judicial system when the party's misconduct has put 'an intolerable burden on a district court by requiring the court to modify its own docket and operations in order to accommodate the delay.'" *Id.* (quoting *Shea*, 795 F.2d at 1075). "[F]inally, the court may consider the need 'to sanction

meaning that civil contempt sanctions would not provide any compensation to plaintiffs. The most expeditious way to allow plaintiffs to recover compensatory and punitive damages for which Giuliani is accountable is to impose adverse inferences as a sanction for Giuliani's discovery failures, as this Court has done, and reach final judgment, whereupon plaintiffs may execute that judgment against Giuliani and his assets, under Federal Rule of Civil Procedure 69 and applicable state law.

conduct that is disrespectful to the court and to deter similar misconduct in the future.'" *Id.* (quoting *Shea*, 795 F.2d at 1077).

"A default judgment is inappropriate unless the litigant's misconduct is accompanied by 'willfulness, bad faith, or fault.'" *Wash. Metro. Area Transit Comm'n v. Reliable Limousine Serv.* ("*WMATC*"), LLC, 776 F.3d 1, 4 (D.C. Cir. 2015) (quoting *Founding Church of Scientology v. Webster*, 802 F.2d 1448, 1458 (D.C. Cir. 1986)). Accordingly, the grant of default judgment must be based upon a finding of "clear and convincing evidence of misconduct" and accompanied by "a specific, reasoned explanation for rejecting lesser sanctions, such as fines, attorneys' fees, or adverse evidentiary rulings." *Shepherd*, 62 F.3d at 1478.

a. *The* Webb *Justifications Support Entry of Default*

Each *Webb* justification applies forcefully here, where Giuliani has not only failed to preserve potentially relevant ESI but compounded that failure by failing to produce any meaningful discovery. First, Giuliani's deliberate failure to preserve his ESI and his failure otherwise to comply with the May 31 Order by producing records responsive to plaintiffs' RFPs have severely hampered plaintiffs' ability to prove each of their claims. *See supra* at Section III.A.4.a, III.B; *accord Guarantee Co. of N. Am. USA v. Lakota Contracting Inc.* ("*Guarantee Co.*"), No. CV 19-1601 (TJK), 2021 WL 2036666, at *4 (D.D.C. May 21, 2021) (finding that first *Webb* factor supported entry of default judgment because the plaintiff "received no discovery from Defendants[,]" and defendants "made it all but impossible for Plaintiff to present its case").

Second, Giuliani's failure to preserve his ESI forced plaintiffs to waste time by wading through thousands of pages of gibberish derived from the TrustPoint dataset in search of some potentially relevant evidence, while his concomitant failure to produce any meaningful discovery has similarly brought this litigation to a standstill. *See Mwani v. bin Laden*, 417 F.3d 1, 7 (D.C.

Cir. 2005) (affirming default judgment under Federal Rule of Civil Procedure 55 where "the adversary process has been halted because of an essentially unresponsive party") (quoting *Jackson v. Beech*, 636 F.2d 831, 836 (D.C. Cir. 1980)); *U.S. Bank Nat'l Ass'n v. Poblete* ("*Poblete*"), No. CV 15-312 (BAH), 2017 WL 598471, at *6 (D.D.C. Feb. 14, 2017) (finding second *Webb* factor satisfied when the defendant's "failure to respond to discovery and penchant for instead filing irrelevant documents with the Court [ ] stalled [the] litigation"). Giuliani has also forced the expenditure of judicial resources to assess and ensure compliance with the most basic of discovery obligations, including consideration of two discovery motions, two discovery hearings, close monitoring of progress through the parties' submission of status reports, and issuance of multiple orders to secure Giuliani's and his businesses' compliance with discovery rules—generally without the result of improved discovery compliance by Giuliani. *See Guarantee Co.*, 2021 WL 2036666, at *4 (finding the second element because the "[t]ime and resources the Court has had to spend on defendants' contumaciousness can never be recovered and applied toward resolving other matters").

Third, despite Giuliani's 50 years of experience as an attorney, he repeatedly flaunted his discovery obligations. *See Poblete*, 2017 WL 598471, at *6 (finding third element met where defendant "demonstrated utter disrespect for the Court's deadlines and a need to deter further noncompliance" by employing tactics "plainly intended to do nothing more than delay the resolution of this matter"). With respect to his preservation obligations, Giuliani took six months and two court hearings to detail his *de minimis* preservation efforts. With respect to the May 31 Order, Giuliani was given reprieve after reprieve to comply with the Order: He was first granted a two-week extension to comply from June 16 to June 30, 2023, *see* Minute Order (June 16, 2023), and then, even after Giuliani apparently failed to comply with the May 31 Order by June 30, 2023,

he was afforded another 35 days to comply without even having filed a motion for extension of time, *see* July 13 Order. His choice to make no effort to comply with the May 31 Order, or even file his two Stipulations *prior* to the June 30, 2023 compliance deadline, can be seen as nothing else than ignoring court orders.

Giuliani's only defense for his willful discovery violations is that he stipulated to all the factual elements of plaintiffs' claims and thereby obviated his discovery obligations. Def.'s Mot. Resp. at 1. Putting aside the fact that Giuliani so stipulated only in response to plaintiffs' motion for sanctions—while still under court-ordered obligations to produce responsive records—Giuliani's Stipulations are simply not effective concessions to liability for plaintiffs' claims. *See* Giuliani Superseding Stip. at 1, ¶¶ 5-6.

Giuliani would like to have his proverbial cake and eat it too: He wants to bypass his discovery obligations now with stipulations that would leave him, somehow, free to raise his affirmative defenses to plaintiffs' claims on appeal, with a record predicated on deficient discovery. This discovery shortcut is simply unfair and will not be permitted here. Rather than granting entry of default based on Giuliani's stipulations, with their various carve-outs and reservations, default is entered here as a straight-up sanction for his discovery failures.

b. Lesser Sanctions Will Not Deter the Conduct

Default judgment is warranted as a sanction when "the party typically has engaged in a pattern of disobedience or noncompliance with court orders . . . and the noncompliance most often has prejudiced the opposing party, so that the court concludes that no lesser sanction is warranted." *Poblete*, 2017 WL 598471, at *6 (alterations in original) (quoting Charles Alan Wright *et al*., 6A FEDERAL PRACTICE AND PROCEDURE § 1531 (3d ed. 2016) (discussing Federal Rule of Civil Procedure 16(f))). The seriousness of Giuliani's multiple discovery violations over the course of

this litigation, coupled with his concession that he is "desirous to avoid unnecessary expenses in litigating what he believes to be unnecessary disputes" and that "liability in this case . . . should be treated as though there is default liability," Giuliani Superseding Stip. at 1 & ¶ 6, make plain that Giuliani has no interest in participating in discovery and that an entry of default is warranted. *See Sec. & Exch. Comm'n v. Hollywood Trenz, Inc.*, 202 F.R.D. 3, 7 (D.D.C. 2001) ("In those cases where a court orders a dismissal or enters a default judgment, the party typically has engaged in a pattern of disobedience or noncompliance with court orders[.]"); *see also WMATC*, 776 F.3d at 4 (holding that default judgment is appropriate if the litigant's misconduct is accompanied by "willfulness, bad faith, or fault") (citation omitted). Accordingly, default judgment is the only appropriate sanction against Giuliani.

2. Plaintiffs Are Entitled to Attorneys' Fees and Costs for Bringing the Instant Motion

In addition to seeking default judgment, plaintiffs also move for an award of attorneys' fees and costs associated with bringing the instant motion pursuant to Rule 37(e)(1). Pls. Mot. at 37. Although Rule 37(e) does not expressly provide that attorneys' fees be awarded to the party successfully alleging spoliation, Judges on this Court have awarded attorneys' fees and costs against the non-moving party when granting (either in part or in full) the moving party's motion for sanctions for failing to preserve discoverable material under Rule 37(e). *See, e.g.*, *Doe*, 2023 WL 3558038, at *16 (awarding attorneys' fees and costs to the party moving for spoliation sanctions and explaining that "[s]ince the 2015 amendment [to Rule 37(e)] . . . '[m]any courts have imposed monetary sanctions under Rule 37(e).'") (second alteration in original) (quoting *Paisley Park*, 330 F.R.D. at 237–38); *Zhi Chen*, 839 F. Supp. 2d at 16–17 (similar). Considering that plaintiffs' relief has been granted in full, an award of attorneys' fees and costs is entirely appropriate here and is accordingly granted.

3. Sanctions for Giuliani's Failure to Comply with Court-Orders to Produce Discovery Related to Damages and Reimburse Plaintiffs' Fees of $89,172.50

Aside from requesting entry of default judgment for liability on their claims, plaintiffs request that, for failing to comply with the June 22 Order's directive to produce fulsome responses to plaintiffs' RFPs 40 and 41 and to satisfy his obligation under the July 13 Order to pay plaintiffs' $89,172.50 in attorneys' fees and costs associated with their motion to compel, Giuliani be held in contempt and be subject to "to a daily financial sanction, accruing interest, until he fully complies with the Orders." Aug. 4 JSR at 5–6 & n.3, 18.

Giuliani has plainly failed to comply with the June 22 and July 13 Orders. First, Giuliani failed to produce "full and complete responses to plaintiffs' requests for financial information in RFP Nos. 40 and 41[,]" even though the June 22 Order directed him to produce all responsive documents to those requests by June 30, 2023. *Id.* at 4–5. Second, Giuliani has still not reimbursed plaintiffs' $89,172.50 in attorneys' fees and costs in connection with plaintiffs' motion to compel, as required by the July 13 Order, *id.* at 17–18, which fees were required to be paid by July 25, 2023. Plaintiffs' request that Giuliani be held in contempt and sanctioned accordingly is not an unreasonable request in these circumstances. *See In re Sealed Case*, 2023 WL 5076091, at *12 (affirming district court's procedure for imposing a contempt sanction when the recalcitrant party disobeyed a "clear and unambiguous court order" to timely produce records in response to a search warrant).

None of Giuliani's attempts to explain away these unambiguous failures to comply with these court orders are persuasive. First, with respect to his failure to comply with the June 22 Order, Giuliani claims he (1) "is unclear, at this point, as to whether the scope of documents the Court ordered produced is still in play given that the reasoning of the Court was that the documents could be relevant to a financial (actual malice motive) which Giuliani now concedes[,]" and (2)

"he has sufficiently complied in this regard (he provided testimony of his net worth in relatively recent proceedings) and is prepared to provide a declaration of net worth, obviating the need for any further production of documents that pertain to net worth," August 4 JSR at 6–7. Regardless of whether he believes his stipulations obviated his obligations to follow court orders—which they did not—the June 22 Order required Giuliani to produce fulsome responses to the entirety of plaintiffs' RFPs 40 and 41, and he did not do so by the date of compliance, June 30, 2023. In any event, Giuliani's objection to producing fulsome responses to RFPs 40 and 41 is not obviated by an entry of default because discovery on defendant's net worth remains relevant in the jury's assessment of the amount, if any, of punitive damages to which plaintiffs are entitled. *See* June 22 Order (making this point); *see also U.S. Sec. & Exch. Comm'n v. China Infrastructure Inv. Corp.*, 189 F. Supp. 3d 118, 128 (D.D.C. 2016) (Howell, C.J.) (noting that "[a] defaulting defendant concedes all well-pleaded factual allegations as to liability, though the court may require additional evidence concerning damages") (quoting *Al-Quraan v. 4115 8th St. NW, LLC*, 123 F. Supp. 3d 1, 1 (D.D.C. 2015)). Moreover, Giuliani's alternative suggestion that he file a declaration in the place of producing records responsive to RFPs 40 and 41 is patently insufficient on its face. Plaintiffs are not required to take Giuliani at his word as to his summary net worth instead of being able to scrutinize documentary records of the same and make their own analysis for presentation to a jury at the trial on any damages they may be owed.

Second, Giuliani's only excuse for his failure to reimburse plaintiffs $89,172.50, in compliance with the July 13 Order, is he "would like to file a motion for leave to seek a deferment on the payment of the fees" because "he is having financial difficulties and would like the payment of fees to be tolled until the case is resolved." *Id.* at 18. Yet, Giuliani has filed no such motion, let alone provided any evidence about his inability to reimburse plaintiffs, which evidence would

come, perhaps, in the form of responses to RFPs 40 and 41. Giuliani's claim that he cannot afford to reimburse plaintiffs is especially dubious considering that (1) he was previously able to "cure[] [his] arrearage with TrustPoint," Second Giuliani Decl. ¶ 5, estimated to be "over $320,000.00," Giuliani Decl. ¶ 5; (2) he has apparently recently listed his three bedroom apartment in New York City for $6.5 million, *see* J. Newsham & M. Schwartz, *Rudy Giuliani Puts Luxury Manhattan Apartment on the Block for $6.5 Million*, Business Insider (Aug. 7, 2023), https://perma.cc/8M6X-EM7M; and (3) when recently traveling to the Fulton County Jail in Atlanta, Georgia, in connection with criminal proceedings against him, Giuliani is reported to have flown "on a private plane," D. Hakim, M. Haberman, & R. Fausset, *Giuliani Surrenders at Jail In Georgia Election Case*, The New York Times (Aug. 23, 2023), https://perma.cc/F53X-MDWM. In short, based on the current record, Giuliani has failed to show that he cannot pay the reimbursement fees he owes.

Additionally, a combination of other sanctions will be imposed on Giuliani, pursuant to Rule 37(b)(2)(A)(i) and (ii), to secure Giuliani's compliance with RFPs 40 and 41 and address his continuing failure to timely reimburse plaintiffs' attorneys' fees and costs. This rule permits the Court to "direct[] that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims" or "prohibit[] the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence" for failing to comply with a discovery order. FED. R. CIV. P. 37(b)(2)(A)(i), (ii). First, Giuliani is precluded from relying on any evidence relating to his net worth that he has failed to produce, by September 20, 2023, to plaintiffs in records responsive to RFPs 40 and 41. Second, as a sanction for failing to comply with, and instead ignoring, the June 22 and July 13 Orders, the jury will be instructed that they *must*, when determining an appropriate sum of punitive damages, infer that Giuliani is intentionally trying to hide relevant discovery about his financial

assets for the purpose of artificially deflating his net worth. *See Motorola Credit Corp. v. Uzan*, 509 F.3d 74, 84 (2d Cir. 2007) (upholding district court's issuance of adverse inference against defendant that refused to turn over net worth discovery).

While "[c]ase law overwhelmingly favors using a permissive rather than mandatory instruction," in special circumstances "a stronger inference" may be warranted. *Beck*, 289 F.R.D. at 380 (collecting cases). In *Beck v. Test Masters Educational Services, Inc.*, for example, a permissive rather than mandatory adverse evidentiary inference was imposed for the defendant's spoliation of evidence because "the Court [did] not find intentional misconduct, but only gross negligence or recklessness on the part of" the defendant. *Id.* at 379–80. By contrast, Giuliani's willful withholding of relevant financial records provides the "special circumstances counseling for a stronger inference" because the only conclusion that could be drawn from this discovery deficiency is that Giuliani is intentionally trying to hide information about his net worth. *See id.* at 380.

For these reasons, Giuliani's failure to comply with the June 22 and July 13 Orders will result in a mandatory instruction about his concealment of his net worth, though should he provide fulsome responses to plaintiffs' RFPs 40 and 41 by September 20, 2023, the mandatory instruction may be converted to permissive. Giuliani will still be precluded from relying on any evidence responsive to RFPs 40 and 41 that he fails to turn over to plaintiffs by September 20, 2023.

4. Plaintiffs Are Entitled to Certain Discovery, Limited 30(b)(6) Depositions, and Attorneys' Fees from the Giuliani Businesses

Even with entry of default against Giuliani, plaintiffs maintain that their entitlement to discovery and 30(b)(6) depositions from the Giuliani Businesses, which relief was requested in their granted-as-conceded Businesses Motion but reserved pending resolution of plaintiffs' instant motions for sanctions. *See supra* Section I.C.

First, plaintiffs assert that they are entitled to the "documents showing metrics and income generated from [Giuliani's podcast] *Common Sense*, particularly those episodes that contain" false statements made against plaintiffs by Giuliani "because such evidence 'is probative of . . . the quantification of damages.'" Aug. 4 JSR at 20 (second alteration in original) (quoting Pls.' Giuliani Businesses Mot. at 9); *see also supra* n.7. This requested documentation of viewership metrics and income generated are plainly relevant to the quantification of punitive damages because the "pressure to produce sensationalistic or high-impact stories with little or no regard for their accuracy would be probative of actual malice." *Tavoulareas v. Piro*, 817 F.2d 762, 796–97 (D.C. Cir. 1987) (emphasis omitted). Giuliani's viewership and revenue information, particularly for episodes containing false statements concerning plaintiffs, may show that Giuliani purposefully spread false claims about plaintiffs to enrich himself, evincing the type of outrageous conduct that would justify a significant award of punitive damages. *See Chatman v. Lawlor*, 831 A.2d 395, 400 (D.C. 2003) (explaining that punitive damages are warranted when the defendant engaged in "outrageous conduct which is malicious, wanton, reckless, or in willful disregard for another's rights") (quoting *Vassiliades v. Garfinckel's, Brooks Brothers, Miller & Rhoades, Inc.*, 492 A.2d 580, 593 (D.C. 1985)). Giuliani's only objection to this additional discovery is that "discovery from the Businesses is now moot" because of his stipulation conceding liability on punitive damages, Aug. 4 JSR at 20, but this is a misfire since the quantification of a punitive damages award will turn on an assessment of the willfulness of Giuliani's conduct. Plaintiffs are thus still entitled to these records from the Giuliani Businesses.

Second, plaintiffs still seek "30(b)(6) depositions of the Giuliani Businesses, for which to date Defendant Giuliani has failed to identify a corporate representative." Aug. 4 JSR at 20; *accord* Pls.' Giuliani Businesses Motion at 9. Under applicable procedural rules, entities, such as the

Giuliani Businesses, when served with a Rule 30(b)(6) subpoena, "must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify." FED. R. CIV. P. 30(b)(6). "Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination." *Id.*; *see Alexander v. FBI*, 186 F.R.D. 137, 140 (D.D.C. 1998) ("Under Rule 30(b)(6), once plaintiffs noticed the deposition and described the subject matter to be inquired upon with reasonable particularity, a number of duties were triggered that must be met by" the defendant, including to designate a deponent). Plaintiffs filed their Giuliani Businesses Motion only after serving the Giuliani Businesses with Rule 30(b)(6) deposition subpoenas and receiving no reply from either business. *See* Pls.' Giuliani Businesses Motion at 1–2. Accordingly, the Giuliani Businesses will be required to designate corporate representative(s) to sit for Rule 30(b)(6) deposition(s), though the topics will now be limited to those concerning the quantification of damages, given entry of default as to Giuliani's liability for plaintiffs' claims and punitive damages.

Third, with respect to attorneys' fees owed to plaintiffs under the July 26 Order, plaintiffs agree with Giuliani that the corporate veil between Giuliani and his businesses need not be pierced, *see* Giuliani Obj. at 2 (noting that Giuliani "objects to the imposition of any attorneys' fees or sanctions against him for the discovery conduct of his eponymous entities"); Pls.' Resp. at 2, and request that the July 26 Order be modified to direct the Giuliani Businesses to pay the $43,684 in attorneys' fees owed, with Giuliani held "personally responsible" only if his eponymous businesses do not comply. Pls.' Resp. at 2–3. Given the parties' agreement on this point, the July 26 Order will be so amended and direct the Giuliani Businesses to reimburse plaintiffs for the $43,684 in attorneys' fees owed. *See id.* at 2–4. Plaintiffs believe that the Businesses likely have

sufficient funds to reimburse plaintiffs for the fees owed because the *Common Sense* podcast, which is operated by Giuliani Communications, derives compensation based on advertising on a "per-view basis" and the reach of this podcast is, according to Giuliani, "over a million people[.]" Pls. Giuliani Businesses Mot., Revised Decl. of Meryl Governski, Ex. 5, March 1, 2023 Giuliani Dep. Tr. at 31:23–33:25, ECF No. 70-7.[11] The July 26 Order will thus be amended to require the Businesses to reimburse plaintiffs for these attorneys' fees.

Giuliani will be directed to ensure his businesses fulfill their court-ordered discovery obligations. As plaintiffs correctly point out, Pls.' Resp. at 2–4 & n.2, 3, courts have routinely directed a corporation's officers to obey court orders and imposed sanctions on those officers when their entities failed to comply. *See, e.g., Secs. & Exch. Comm'n v. Diversified Growth Corp*, No. 81-0084, 1984 WL 21134, at *1 (D.C. Cir. Sept. 24, 1984) (affirming district court's holding of non-party corporate officer in contempt for violating a court order directed at the corporate party "because appellant is an officer of a party corporation receiving actual notice of the order, who has personally abetted that party and has had his day in court") (citation omitted); *Fed. Trade Comm'n v. Leshin*, 618 F.3d 1221, 1236 (11th Cir. 2010) (holding individual officers jointly and severally liable, along with defendant corporation, for violating an injunction); *In re Special Couns. Investigation*, 374 F. Supp. 2d 238, 241–42 (D.D.C. 2005) (observing that that the corporate defendant "as well as its controlling officers, have no legal right to defy a final court order, and an officer failing to take steps to have the corporation comply could be punished by contempt"). In his position as the sole owner of the Giuliani Businesses, Third Giuliani Decl. ¶¶ 2-3, which have just two other employees apart from Giuliani, *id.* ¶¶ 6-7, Giuliani is directed, on behalf of his

[11] Notwithstanding plaintiffs' belief, whether the Giuliani Businesses themselves have sufficient assets to cover plaintiffs' owed attorneys' fees remains to be seen since Giuliani maintained in his Third Declaration that his eponymous businesses have no assets other than media equipment. Third Giuliani Decl. ¶¶ 10-11.

Businesses, by September 20, 2023, to produce the requested records from his Businesses and designate one or more corporate representatives on behalf of each of the Giuliani Businesses to sit promptly for deposition(s). For the same reasons, Giuliani will also be directed, by September 20, 2023, to ensure his eponymous businesses reimburse plaintiffs the $43,684 in attorneys' fees they owe. Should he fail to make his Businesses timely pay their fees owed, however, Giuliani will be sanctioned, pursuant to Rule 37(b)(2)(A), by being held personally liable for the $43,684 in attorneys' fees owed, which amount will be added onto the final judgment against him, plus interest accrued from September 20, 2023 until the date of final judgment. *See* FED. R. CIV. P. 37(b)(2)(A) ("If a party *or a party's officer, director, or managing agent* . . . fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders.") (emphasis added); *see also Wisconsin Laborers Health Fund v. Final Result LLC*, No. 12-CV-129-JPS, 2013 WL 587467, at *1 (E.D. Wis. Feb. 13, 2013) (holding the defendant's corporate representative "personally liable for any attorneys['] fees and costs incurred by the plaintiffs" because "[c]ontempt by a corporation is chargeable to the officers responsible for the contempt").[12]

For these reasons, the Giuliani Businesses must, by September 20, 2023, produce responsive discovery concerning viewership metrics and income generated, designate corporate representative(s) to sit for Rule 30(b)(6) deposition(s), which must occur promptly, and reimburse

[12] Giuliani cites the Fourth Circuit's decision in *Life Technologies Corp. v. Govindaraj*, 931 F.3d 259 (2019), for the proposition that he should not be held liable for attorneys' fees owed by his eponymous businesses without a finding that the corporate veil between him and his businesses should be pierced, Def.'s Obj. at 2, but this non-binding circuit decision is distinguishable and unpersuasive for several reasons. In *Life Technologies Corp.*, the Fourth Circuit reversed the district court's decision to hold a non-party corporate officer personally liable for the corporate defendant's trademark infringement after piercing the corporate veil between the two because the non-party officer "was not named as a party in the case, and he was not personally served with process[,]" so he was not given "adequate notice of [his] potential exposure" and "the opportunity to defend against personal liability." *Id.* at 265. By contrast to the non-party officer in *Life Technologies Corp.*, not only is Giuliani a party to the case and was given adequate notice of his potential exposure here, but Giuliani will only be held personally responsible if his Businesses do not timely pay the fees they owe as a sanction under Rule 37(b)(2)(A), not under a theory of alter-ego liability.

plaintiffs the $43,684 in attorneys' fees owed under the July 26 Order, with Giuliani specifically directed to ensure the Businesses' compliance with each of these three directions.

IV. CONCLUSION

For the above reasons, plaintiffs' motion for sanctions for failure to preserve ESI is granted, and default judgment against Giuliani on plaintiffs' claims is imposed, as a sanction under both Federal Rules of Civil Procedure 37(e)(2)(C) and 37(b)(2)(A)(vi). Before final judgment may be entered reflecting the amount of compensatory and punitive damages, if any, to be awarded to plaintiffs, a trial on such damages is required, *see* FED. R. CIV. P. 55(b)(2)(B), and the parties will be directed to confer and propose three dates for the damages trial by early 2024.

In preparation for a trial on damages, Giuliani and his eponymous businesses will be directed, again, to produce, by September 20, 2023, records relevant to the quantifications of damages that they were required, but still have failed, to produce. First, Giuliani is directed to produce complete responses to plaintiffs' requests for financial documents, set out in plaintiffs' RFPs 40 and 41. *See supra* n.4. Second, Giuliani is directed to ensure the Giuliani Businesses produce complete responses to plaintiffs' requests for financial documents and viewership metrics, inclusive of records responsive to RFPs 19 and 35. *See supra* n.7. Third, Giuliani is directed, on behalf of his businesses, to confer with plaintiffs regarding the designation of one or more corporate representatives on behalf of the Giuliani Businesses to sit promptly for Rule 30(b)(6) deposition(s) on topics concerning the quantification of damages. Finally, Giuliani's failure to comply with the June 22 and July 13 Orders will result in a mandatory instruction about his concealment of his net worth, though should he provide, by September 20, 2023, fulsome responses to plaintiffs' RFPs 40 and 41, the mandatory instruction may be converted to permissive.

With respect to Giuliani's obligations to reimburse plaintiffs' attorneys' fees and costs, Giuliani is directed: (1) to reimburse such fees and costs associated with plaintiffs' successful first motion to compel discovery, in the amount totaling $89,172.50, with interest on that amount from July 25, 2023; (2) to reimburse such attorneys' fees and costs associated with plaintiffs' motion for sanctions, pursuant to Rule 37(e); and (3) to ensure the Giuliani Businesses reimburse such fees and costs associated with plaintiffs' successful motion to compel discovery from the Businesses, in the amount totaling $43,684. Should the Giuliani Businesses fail to timely reimburse plaintiffs the $43,684, Giuliani will bear that cost as a sanction under Rule 37(b)(2)(A), with interest on that amount to accrue from September 20, 2023.

An order consistent with this Memorandum Opinion will be entered contemporaneously.

Date: August 30, 2023

BERYL A. HOWELL
United States District Judge

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUBY FREEMAN, *et al.*, Plaintiffs, v. RUDOLPH W. GIULIANI, Defendant.	Civil Action No. 21-3354 (BAH) Judge Beryl A. Howell

VERDICT FORM

We, the Jury, unanimously find the following on the questions submitted to us:

COMPENSATORY DAMAGES:

DEFAMATION CLAIM

1. What amount of compensatory damages, if any, would fairly and reasonably compensate Ms. Freeman for defamation caused by Mr. Giuliani and his co-conspirators?

AMOUNT: $ 16,171,000.00

2. What amount of compensatory damages, if any, would fairly and reasonably compensate Ms. Moss for defamation caused by Mr. Giuliani and his co-conspirators?

AMOUNT: $ 16,998,000.00

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM

3. What amount of compensatory damages, if any, would fairly and reasonably compensate Ms. Freeman for emotional distress caused by Mr. Giuliani and his co-conspirators?

AMOUNT: $ 20,000,000.00

4. What amount of compensatory damages, if any, would fairly and reasonably compensate Ms. Moss for emotional distress inflicted by Mr. Giuliani and his co-conspirators?

AMOUNT: $ 20,000,000.00

PUNITIVE DAMAGES:

5. What amount of punitive damages, if any, should be awarded to Ms. Freeman and Ms. Moss for Mr. Giuliani's conduct?

AMOUNT: $ 75,000,000.00

DATE and TIME: 12/15/23
3:35 PM

Signature of Foreperson

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUBY FREEMAN and WANDREA' MOSS, Plaintiffs, v. RUDOLPH W. GIULIANI, Defendant.	Civil Action No. 21-3354 (BAH)

JOINT STIPULATION REGARDING ENTRY OF FINAL JUDGMENT

The parties continued to meet and confer over the weekend and have reached the following agreement regarding certain outstanding matters relating to the final judgment in this case:

1. In resolution of any setoff claim Defendant Giuliani may have arising from Plaintiffs' May 31, 2022 settlement agreement with the other defendants in this litigation, the parties agree that each Plaintiff's award of compensatory damages should be reduced by one half of the amount of any payment made as consideration for that settlement agreement. *See* ECF No. 67 ¶ 5.

2. Based on the law of this case and in resolution of Plaintiffs' claim for declaratory relief and subject to Defendant Giuliani's reservation of rights in Paragraph 3 herein,[1] the parties agree that the Court should enter declaratory relief as follows, and that such declaratory relief is consistent with the default judgment and other related orders entered in this case:

> It is hereby DECLARED pursuant to 28 U.S.C. § 2201(a), as between Plaintiffs and Defendant: (1) that the Actionable Statements set forth in the Amended Complaint (ECF No. 22) are false; (2) that those statements are defamatory and defamatory per se; (3) that those statements were of and concerning Plaintiffs; (4) that Defendant made those statements with actual malice; (5) that Defendant published those statements to third parties without privilege; and (6) that those statements caused Plaintiffs harm.
>
> It is further hereby DECLARED pursuant to 28 U.S.C. § 2201(a), as between Plaintiffs and Defendant: (1) that Defendant Giuliani engaged in extreme and outrageous conduct which (2) intentionally and maliciously (3) caused the Plaintiffs to suffer severe emotional distress.
>
> It is hereby DECLARED pursuant to 28 U.S.C. § 2201(a), as between Plaintiffs and Defendant: (1) that Defendant Giuliani entered into an agreement on or before December 3, 2020, with Donald J. Trump, Christina Bobb, Herring Networks, Inc., d/b/a OAN, Robert Herring, Charles Herring, Chanel Rion, and members of the Trump 2020 Presidential Campaign, including members of the Trump Legal team headed by Giuliani, who caused statements to be published about Plaintiffs or participated in such publications, (2) to participate in defamation of and intentional infliction of emotional distress on Plaintiffs, and (3) that Plaintiffs were injured by unlawful overt acts performed by parties to the agreement pursuant to, and in furtherance of, the common scheme.

[1] Defendant Giuliani agrees to the entry of the declaratory relief herein only because, based on the existing default judgment and other orders of this Court, this reflects the law of the case. Giuliani does not herein concede the truths of the matters asserted in the declaratory relief, including, but not limited to, whether the statements were false, whether Giuliani had actual knowledge of the alleged falsity of the statements, whether the statements were statements of fact as opposed to non-actionable opinion, and whether there was any conspiracy to harm Plaintiffs. Nor, as outlined in Paragraph 3, does he hereby waive any properly preserved rights to appeal the default judgment and any other orders of this Court.

> It is hereby DECLARED pursuant to 28 U.S.C. § 2201(a), as between Plaintiffs and Defendant: that Defendant's conduct was intentional, malicious, wanton, and willful, such that Plaintiffs are entitled to punitive damages.

3. This agreement does not affect Defendant Giuliani's ability to raise any properly preserved challenge to the appropriateness of the default judgment itself (or any orders affecting the appropriateness of the default judgment) in this Court or on appeal. This agreement further does not affect Defendant Giuliani's ability to raise any other issue in this Court or on appeal that was properly preserved regarding the propriety of the default judgment, the jury's verdict, or the Court's forthcoming final judgment. Should Giuliani be successful in this Court or on appeal in setting aside or otherwise challenging the propriety of the default judgment (or any orders affecting the appropriateness of the default judgment or the forthcoming final judgment), the parties agree that the declaratory relief contemplated herein will be conformed to the decision entered, to the extent any such decision entered still supports an award of declaratory relief.

4. The parties further agree that Plaintiffs will not, in this action, pursue the injunctive relief demanded in the Amended Complaint, or any claim to prejudgment interest.[2]

5. The parties agree that with these matters resolved, the Court should promptly enter final judgment accordingly, and have attached a proposed order to that effect.

DATED: December 18, 2023

Respectfully submitted,

[2] The parties understand that the federal post-judgment interest rate for judgments entered this week, which is "equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment," 28 U.S.C. § 1961, will become available when the Federal Reserve releases the relevant data at 4:15 p.m. Eastern Time. *See* https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15.

/s/ Michael J. Gottlieb
WILLKIE FARR & GALLAGHER LLP
Michael J. Gottlieb (974960)
Meryl C. Governski (1023549)
Aaron E. Nathan (1047269)
J. Tyler Knoblett (1672514)
Timothy P. Ryan (1719055)
1875 K Street NW
Washington, DC 20006
Tel: (202) 303-1000
Fax: (202) 303-2000
mgottlieb@willkie.com
mgovernski@willkie.com
anathan@willkie.com
jknoblett@willkie.com
tryan@willkie.com

WILLKIE FARR & GALLAGHER LLP
M. Annie Houghton-Larsen*
787 7th Avenue
New York, New York
Tel: (212) 728-8164
Fax: (212) 728-9164
mhoughton-larsen@willkie.com

UNITED TO PROTECT DEMOCRACY
John Langford*
Rachel Goodman*
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org

DUBOSE MILLER LLC
Von A. DuBose*
75 14th Street NE, Suite 2110
Atlanta, GA 30309
Tel: (404) 720-8111
dubose@dubosemiller.com

UNITED TO PROTECT DEMOCRACY
Brittany Williams*
15 Main Street, Ste. 312
Watertown, MA 02472
Tel: (202) 579-4582

/s/ Joseph D. Sibley
CAMARA & SIBLEY L.L.P.
Joseph D. Sibley IV
DC Bar ID: TX0202
1108 Lavaca St.
Suite 110263
Austin, TX 78701
Telephone: (713) 966-6789
Fax: (713) 583-1131
Email: sibley@camarasibley.com

Counsel for Defendant

brittany.williams@protectdemocracy.org

UNITED TO PROTECT DEMOCRACY
Christine Kwon*
P.O. Box 341423
Los Angeles, CA 90013
Tel: (202) 579-4582
christine.kwon@protectdemocracy.org

UNITED TO PROTECT DEMOCRACY
Sara Chimene-Weiss*
7000 N 16th Street Ste. 120, #430
Phoenix, AZ 85020
Tel: (202) 579-4582
sara.chimene-weiss@protectdemocracy.org

Attorneys for Plaintiffs Ruby Freeman and Wandrea' Moss

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that the foregoing was served on counsel for all parties on December 18, 2023, by filing it with the Court's CM/ECF system.

s/ *Michael J. Gottlieb*

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUBY FREEMAN, *et al.*, Plaintiffs, v. RUDOLPH W. GIULIANI, Defendant.	Civil Action No. 21-3354 (BAH) Judge Beryl A. Howell

FINAL JUDGMENT

Upon consideration of the Joint Stipulation Regarding Entry of Final Judgment, ECF No. 138, agreed to jointly by the parties, the entry of default judgment on liability against defendant Rudolph W. Giuliani on plaintiffs' well-pleaded claims for defamation, intentional infliction of emotional distress, and civil conspiracy to commit those torts, as a sanction for defendant's sanctionable "willful shirking of his discovery obligations in anticipation of and during this litigation," *Freeman v. Giuliani*, No. 21-cv-3354 (BAH), 2023 WL 5600316, at *2 (D.D.C. Aug. 30, 2023), pursuant to FEDERAL RULES OF CIVIL PROCEDURE 37(e)(2)(C) and 37(b)(2)(A)(vi); *see also* Default Judgment Order, ECF No. 93, and the jury verdict on the amount of damages owed to plaintiffs by defendant, *see* ECF No. 135, it is hereby **ORDERED, ADJUDGED, and DECLARED** as follows:

1. Plaintiffs Ruby Freeman and Wandrea' Moss shall recover from the defendant Rudolph W. Giuliani damages in the amount of $145,969,000.00, plus post-judgment interest at the rate of 5.01 % per annum, along with costs.
2. Plaintiffs Ruby Freeman and Wandrea' Moss shall recover from the defendant Rudolph W. Giuliani attorney's fees as follows:

a. in the amount of $89,172.50, pursuant to this Court's Order dated August 30, 2023, ECF No. 93, plus post-judgment interest accruing from July 25, 2023, at the rate of 5.33% per annum;

b. in the amount of $43,684, pursuant to this Court's Order dated August 30, 2023, ECF No. 93, plus post-judgment interest accruing from September 20, 2023, at the rate of 5.42% per annum; and

c. in the amount of $104,256.50, pursuant to the Court's September 22, 2023 Minute Order, plus post-judgment interest accruing from October 6, 2023, at the rate of 5.46% per annum.

3. It is hereby DECLARED pursuant to 28 U.S.C. § 2201(a), as between plaintiffs and defendant, as follows:

a. It is hereby DECLARED (1) that the Actionable Statements set forth in the Amended Complaint, ECF No. 22, are false; (2) that those statements are defamatory and defamatory *per se*; (3) that those statements were of and concerning plaintiffs; (4) that defendant made those statements with actual malice; (5) that defendant published those statements to third parties without privilege; and (6) that those statements caused plaintiffs harm;

b. It is further DECLARED (1) that defendant Giuliani engaged in extreme and outrageous conduct which (2) intentionally and maliciously (3) caused the plaintiffs to suffer severe emotional distress;

c. It is further DECLARED (1) that defendant Giuliani entered into an agreement on or before December 3, 2020, with Donald J. Trump, Christina Bobb, Herring Networks, Inc., d/b/a OAN, Robert Herring, Charles

Herring, Chanel Rion, and members of the Trump 2020 Presidential Campaign, including members of the Trump Legal team headed by Giuliani, who caused statements to be published about plaintiffs or participated in such publications, (2) to participate in defamation of and intentional infliction of emotional distress on plaintiffs, and (3) that plaintiffs were injured by unlawful overt acts performed by parties to the agreement pursuant to, and in furtherance of, the common scheme.

d. It is further DECLARED that defendant's conduct was intentional, malicious, wanton, and willful, such that plaintiffs are entitled to punitive damages.

SO ORDERED.

Date: December 18, 2023

BERYL A. HOWELL
United States District Judge

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RUBY FREEMAN and WANDREA' MOSS,[1]

Plaintiffs,

v.

RUDOLPH W. GIULIANI,
45 East 66th Street, Apt. 10W
New York, NY 10065,

Defendant.

Case No. _____

COMPLAINT

INTRODUCTION

1. This is an action for injunctive relief to permanently bar Defendant Rudolph W. Giuliani ("Defendant") from persisting in his defamatory campaign against Plaintiffs Ruby Freeman and Wandrea' ArShaye "Shaye" Moss ("Plaintiffs"). Defendant Giuliani has engaged in, and is engaging in, a continuing course of repetitive false speech and harassment—specifically, repeating over and over the same lies that Plaintiffs engaged in election fraud during their service as election workers during the 2020 presidential election.

2. Defendant Giuliani has already been found liable for defamation arising from these same lies in an action currently pending in this Court, captioned *Freeman et al. v. Giuliani*, No. 21-cv-3354 (D.D.C.) (*"Freeman I"*). A copy of the operative complaint in that action is attached

[1] Plaintiffs respectfully request relief from Local Civil Rule 5.1(c)'s requirement that their Complaint include the "full residence address" of each Plaintiff for the same reasons Plaintiffs previously requested such relief in the related case. *See* Plaintiffs' *Ex Parte* Mot. & Mem. in Supp. of Mot. for Waiver of Local Civil Rule 5.1(c), *Freeman v. Giuliani*, No. 21-cv-3354 (D.D.C.), ECF No. 2.

to this Complaint as Exhibit A and incorporated herein by reference. On August 31, 2023, the United States District Court for the District of Columbia entered a default judgment as to liability against Defendant Giuliani in *Freeman I*, which had the effect of deeming as true the factual allegations in the operative complaint in *Freeman I*. A copy of the order granting a default judgment is attached to this Complaint as Exhibit B and incorporated herein by reference. A trial on damages has recently been held, although judgment has not yet been entered, in *Freeman I*.

3. Defendant Giuliani continues to spread the very same lies for which he has already been held liable in the *Freeman I* action. For example, on December 11, 2023, Defendant Giuliani held an impromptu press conference before a gaggle of reporters. Standing in front of the cameras, Defendant Giuliani stated that his forthcoming testimony would make: "definitively clear that ***what I said was true***, and that, whatever happened to them—which is unfortunate about other people overreacting—***everything I said about them is true.***"[2] When asked whether he regretted his actions, Defendant Giuliani stated: "Of course I don't regret it . . . ***I told the truth***. ***They were engaged in changing votes.***" Finally, when a reporter pointed out that there was "no proof of that," Defendant Giuliani stated, "***You're damn right there is*** . . . . Stay tuned."

4. On December 15, 2023, just hours after the jury in *Freeman I* returned a $148 million verdict against him, Defendant Giuliani appeared from Washington, D.C. for a live interview on Newsmax, in which he repeatedly asserted, either directly or at minimum by implication, that he was in possession of video evidence demonstrating the truth of his allegations against Plaintiffs.[3] Defendant Giuliani explained that he was unable to present evidence at trial of

[2] https://www.youtube.com/watch?v=2W3Empyl4U0 at 0:44-0:56. An ABC News video of Defendant Giuliani's statement is available at https://abcnews.go.com/Politics/video/former-poll-workers-stand-giuliani-defamation-trial-105595918 at 3:01-3:06.

[3] https://www.newsmaxtv.com/Shows/Greg-Kelly-Reports/vid/37e2c0a0-9bcc-11ee-bf63-1b74393babdd at 0:00-10:43.

"all the videos at the time" showing "what happened at the arena."[4] Those statements at minimum falsely implied to the reasonable viewer that Mr. Giuliani possesses video evidence that Ms. Freeman and Ms. Moss engaged in election fraud in Georgia during the 2020 Presidential Election.

5. Before filing this lawsuit, Plaintiffs' counsel asked Defendant Giuliani to enter into an agreement to stop publishing these and any similar false claims about Plaintiffs. Defendant Giuliani refused.

6. Defendant Giuliani's statements, coupled with his refusal to agree to refrain from continuing to make such statements, make clear that he intends to persist in his campaign of targeted defamation and harassment. It must stop. In these unique circumstances, the proper remedy is a targeted injunction barring Defendant Giuliani from continuing to repeat the very falsehoods about Plaintiffs that have already been found and held, conclusively, to be defamatory.

PARTIES

7. Plaintiff Ruby Freeman is a resident and citizen of Georgia. Ms. Freeman is a plaintiff in *Freeman I.*

8. Plaintiff Wandrea' ArShaye "Shaye" Moss is a resident and citizen of Georgia. Ms. Moss is a plaintiff in *Freeman I.*

9. Defendant Rudolph W. Giuliani is a former politician and government official, now a media personality. Defendant Giuliani is a resident and citizen of New York. Defendant Giuliani is a defendant in *Freeman I*.

[4] *Id*. at 9:50-10:43.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because this action is between citizens of different states and the amount in controversy exceeds $75,000 exclusive of interest and costs.

11. This Court has personal jurisdiction over Defendant Giuliani pursuant to D.C. Code § 13-423(a)(1) because the action arises from Defendant Giuliani's transacting business within the District of Columbia, and pursuant to D.C. Code § 13-423(a)(3) because the action arises from Defendant Giuliani's causing tortious injury in the District of Columbia by one or more acts in the District of Columbia. The Court also has personal jurisdiction over Defendant Giuliani pursuant to D.C. Code § 13-423(a)(4) because this action arises from Defendant Giuliani's causing tortious injury by acts committed outside the District of Columbia while (1) regularly doing or soliciting business within, (2) engaging in a persistent course of conduct within, and/or (3) deriving substantial revenue from services rendered within the District of Columbia.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in the District of Columbia.

FACTS

13. Defendant Giuliani is continuing to defame Plaintiffs by repeating his debunked lies about them. His continuing course of repetitive defamatory statements include—but are not limited to—the following representative examples:

14. A statement on December 11, 2023, when Defendant Giuliani held an impromptu press conference before a gaggle of reporters in Washington, D.C. Standing in front of the cameras, Defendant Giuliani stated:

> When I testify, the whole story will be definitively clear that what I said was true, and that, whatever happened to them -- which is unfortunate about other people overreacting -- everything I said about them is true.

> Reporter Terry Moran: Do you regret what you did to Ruby and Shaye?
>
> Giuliani: Of course I don't regret it. I told the truth. They were engaged in changing votes.
>
> Moran: There's no proof of that.
>
> Giuliani: You're damn right there is. Stay tuned.[5]

15. A statement on December 15, 2023, when Defendant Giuliani again spoke to reporters in Washington D.C., and stated as follows in response to the following question:

> Q: Do you still believe that what you said about these two women in the wake of the 2020 election is truthful?
>
> A: I, yeah . . . I have no doubt that my comments were made and they were supportable and are supportable today. I just did not have an opportunity to present the evidence that we offered.[6]

16. A statement on December 16, 2023, on Steve Bannon's "War Room" podcast, wherein Defendant Giuliani stated:

> First, I couldn't defend myself on whether I had committed libel or not. Wasn't allowed to put in the videotapes of them doing what I said they did, which I could have demonstrated to the jury. I couldn't call witnesses, who would support what I said. I couldn't put documents on and reports from credible sources that said that fraud took place there.
> . . .
> Never, never, never did any of those jurors see a single piece of evidence that many Americans have seen about how these women acted that would have been totally contrary to the, to their unrebutted, uncorroborated testimony. It's a sham of a trial.[7]

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[5] https://www.youtube.com/watch?v=2W3Emypl4U0, at 0:38-1:10.

[6] *Rudy Giuliani Comments to Reporters on Elections Workers Defamation Case Verdict*, C-SPAN (Dec. 15, 2023), https://www.c-span.org/video/?532478-101/rudy-giuliani-comments-reporters-election-workers-defamation-case-verdict.

[7] *Episode 3253: The Making of an American First Economy*, Bannon's War Room (Dec. 16, 2023), https://podcasts.apple.com/us/podcast/episode-3253-the-making-of-an-america-first-economy/id1485351658?i=1000638797246

FIRST CAUSE OF ACTION
(Defamation/Defamation *Per Se*)

17. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully set forth herein.

18. Defendant Giuliani continues to publish, and intends to continue to publish—and cause to be published—a series of repetitive false and defamatory statements of fact about Plaintiffs, in a manner that also led and will continue to lead to the reasonably foreseeable publication and republication of those and similar statements. The defamatory meanings of Defendant's false statements and implied statements of facts are apparent from the face of the publications, refer to Ms. Freeman and Ms. Moss by name, often are accompanied by images of Ms. Freeman and/or Ms. Moss, and/or are understood to be about them.

19. The statements authored, published, and caused to be published by Defendant about Ms. Freeman and Ms. Moss are reasonably understood to state or imply that they: had a history of engaging in fraudulent behavior; engaged in a criminal conspiracy, along with others, to illegally exclude observers during the counting of ballots "under false pretenses" so that they could engage in election fraud; criminally and/or fraudulently introduced "suitcases" of illegal ballots into the ballot counting process; criminally and/or fraudulently counted the same ballots multiple times; surreptitiously passed around flash drives that were not supposed to be placed in Dominion voting machines; and/or committed crimes and other fraud.

20. Each of these statements and implications is false and defamatory per se. Defendant's statements and implications about Ms. Freeman and Ms. Moss constitute defamation *per se* in that they damaged them in their trade, office, or profession and claimed that they participated in criminal activity punishable by law and, in the full course of his conduct, he has often labeled them a "robber" and a "cheat[er]."

21. Each of these statements was or will be viewed, read, or listened to by thousands, and potentially millions, of individuals.

22. Plaintiffs are private figures, but in any event each of these false statements was published with actual malice, *i.e.*, with knowledge of its falsity or with reckless disregard as to its truth. At a minimum, Defendant acted negligently—that is, without an ordinary degree of care in assessing or investigating the truth of the statement prior to publication. Further, Defendant had no applicable privilege or legal authorization to make these false and defamatory statements, or if he did, he abused it.

23. Defendant acted with willful misconduct, malice, fraud, wantonness, oppression, and/or entire want of care which would raise the presumption of conscious indifference to consequences, and he specifically intended to cause Ms. Freeman and Ms. Moss harm.

24. Defendant's statements damaged and continue to damage Ms. Freeman's and Ms. Moss's reputations in the general public, in their professions, in their church communities, in their neighborhood, and with friends, relatives, and neighbors.

25. As a direct and proximate result of Defendant's conduct, Ms. Freeman and Ms. Moss have suffered and continue to suffer significant general, actual, consequential, and special damages including, without limitation, impairment of reputation and standing in the community, personal humiliation, mental anguish and suffering, emotional distress, stress, anxiety, lost earnings, and other pecuniary loss. Among other things, Ms. Freeman and Ms. Moss have lost income. Those harms are ongoing and, if Defendant Giuliani is not prevented from continuing to repeat his defamatory statements about Plaintiffs, those harms will continue.

SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

26. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully set forth herein.

27. Defendant Giuliani's course of conduct directed specifically at Ms. Freeman and Ms. Moss was malicious, wanton, and intentional, and reflected a want of care which would raise the presumption of conscious indifference to consequences. That conduct includes deliberately drawing attention to Ms. Freeman and Ms. Moss, encouraging others to scrutinize and disbelieve them, and continuing to fuel the perception held by those receptive to his views that Ms. Freeman and Ms. Moss engaged in criminal wrongdoing during the 2020 Presidential Election.

28. Moreover, Defendant Giuliani specifically intended to cause Ms. Freeman and Ms. Moss harm. Defendant Giuliani understands the nature and extent of the threats and harassment that have previously followed from Defendant Giuliani's intentional repetition of his false and defamatory lies. His continuing repetition of those statements, in light of this documented history, are best understood as a deliberate effort to cause that effect.

29. Defendant's wrongful conduct was extreme and outrageous, and it was calculated to cause harm to Ms. Freeman and Ms. Moss. Defendant's wrongful conduct is so outrageous in character and so extreme in degree that it is beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community. Defendant Giuliani carried out his campaign with actual malice, as he either knew that his accusations were false or published them with reckless disregard for their truth.

30. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered significant general, actual, incidental, and special damages including, without limitation, emotional distress, overwhelming stress and anxiety, lost earnings, and other pecuniary loss. Those

harms are ongoing and, if Defendant Giuliani is not prevented from continuing to repeat his defamatory statements about Plaintiffs, those harms will continue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court award Plaintiffs:

A. Injunctive relief enjoining Defendant from making or publishing, or causing to be made or published, further statements repeating any and all false claims that Plaintiffs engaged in election fraud, illegal activity, or misconduct of any kind during or related to the 2020 presidential election; that either Plaintiff was arrested for any such fraud, illegal activity, or misconduct; and/or that either Plaintiff had any record of engaging in election fraud or related illegal activity or misconduct prior to the 2020 presidential election;

B. The costs of this action, including attorney's fees; and

C. Such other and further relief as this Court deems just and proper.

Dated: December 18, 2023

Respectfully submitted,

By: */s/ Michael J. Gottlieb*

Michael J. Gottlieb (974960)
Meryl C. Governski (1023549)
Aaron E. Nathan (1047269)
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
Tel: (202) 303-1000
Fax: (202) 303-2000
mgottlieb@willkie.com
mgovernski@willkie.com
anathan@willkie.com

M. Annie Houghton-Larsen*
WILLKIE FARR & GALLAGHER LLP
787 7th Avenue
New York, New York

John Langford*
Rachel Goodman*
UNITED TO PROTECT DEMOCRACY, INC.
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org

Von A. DuBose*
DUBOSE MILLER LLC
75 14th Street NE, Suite 2110
Atlanta, Georgia 30309
Tel: (404) 720-8111
dubose@dubosemiller.com

Tel: (212) 728-8164
Fax: (212) 728-9164
mhoughton-larsen@willkie.com

**Pro hac vice application forthcoming*

Counsel for Plaintiffs