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<sup>3</sup> The absence of any such evidence likewise would preclude Dominion from proving that Fox Corporation is the proximate cause of any injury it may have suffered on account of the challenged coverage, which is another essential element of its claims. *See, e.g., Wilcox v. Newark Valley Cent. Sch. Dist.*, 129 A.D.3d 1230, 1234 (N.Y. App. Div. 2015) (defamation damages must be “based upon proof of harms limited to those that can be linked by proximate cause to the [] slanderous statements”).







In short, even setting aside the problem that vicarious liability is foreclosed as a matter of law, there is no evidence to support it. Dominion thus must produce evidence that would sustain a finding that Fox Corporation directly participated in the creation or publication of each challenged statement, which it likewise has failed to do. Dominion's Complaint should accordingly meet the same fate as so many other efforts to hold a parent company liable for the publications of subsidiaries: dismissal in its entirety. *See Franklin v. Daily Hldgs., Inc.*, 135 A.D.3d 87, 96 (N.Y. App. Div. 2015) (dismissing a defamation claim against News Corp. for an article published by its subsidiary in the *Daily*); *Stern*, 2010 WL 5158635, at \*4 (granting summary judgment dismissing a defamation claim against News Corp. for an article published by its subsidiary, the *New York Post*); *Williby v. Hearst Corp.*, 2017 WL 1210036, at \*4 (N.D. Cal. Mar. 31, 2017) (dismissing defamation claim against parent company where “[p]laintiff allege[d] no facts that suggest the [parent] authorized or otherwise manifested the intent for [its subsidiary or the subsidiary’s journalist] to act on its behalf”); *Martin v. Mooney*, 448 F. Supp. 3d 72, 79 (D.N.H. 2020) (dismissing defamation claims against parent company where “complaint [did] not . . . include facts that support a reasonable inference that the corporate relationship between [parent and subsidiary] [was] being used to accomplish a wrongful purpose”).

### **III. Dominion is Not Entitled to Recover Economic or Punitive Damages From Fox Corporation.**

Even if Dominion could establish liability, Fox Corporation is entitled to summary judgment on Dominion's claims for economic damages, including lost profits and lost enterprise value, for the same reasons and evidence articulated in the FNN MSJ. Fox Corporation incorporates by reference Section III of Fox News's opening brief. Indeed, Dominion's causation theories are (if possible) even more strained as to Fox Corporation, which did not even exercise any control over the creation or publication of any of the challenged statements.

Dominion likewise is not entitled to seek punitive damages against Fox Corporation. To recover punitive damages, Dominion would have to prove not only actual malice, but common-law malice, which requires proof that the defendant made defamatory statements "out of hatred, ill will, or spite." *Celle v. Filipino Rep. Enters. Inc.*, 209 F.3d 163, 184 (2d. Cir. 2000). "[A] triable issue as to common-law malice is raised only if a reasonable jury could find that the speaker was *solely* motivated by a desire to injure the plaintiff." *Present v. Avon Prods., Inc.*, 253 A.D.2d 183, 189 (N.Y. App. Div. 1999). Moreover, New York law does not permit strict vicarious liability for punitive damages. Dominion would instead have to prove that "a superior officer" at Fox Corporation—*i.e.*, someone with "sufficiently high" responsibility in the organization—"participate[d] in, or ratifie[d] [the]

outrageous conduct.” *Loughry v. Lincoln First Bank, N.A.*, 494 N.E.2d 70, 75-76 (N.Y. 1986). And given its own allegations, that someone would have to be Rupert or Lachlan Murdoch.

As explained in Parts I and II, Fox Corporation did not make, create, publish, or direct any of the challenged statements at all, let alone do so with actual malice. But even if Dominion could somehow prove its accusation that Rupert or Lachlan Murdoch (or even anyone else at Fox Corporation) was responsible for the challenged statements, there is zero evidence that any high-level executive at Fox Corporation harbored any ill will toward Dominion. To the contrary, *even Dominion’s own expert* agrees that “[t]here is no evidence that Fox, its hosts, producers, and executives particularly wanted to harm Dominion.” Ex. F5, Sesno Report, at ¶63 (Nov. 28, 2022). Indeed, Dominion has never even argued that anyone at Fox News or Fox Corporation harbored some deep-seated ill will toward *Dominion*. As to both Fox News and Fox Corporation, Dominion’s theory has instead always been that Dominion was collateral damage in an effort to boost Fox News’s ratings and help then-President Trump. *See* FNN MSJ Brief at 154; Ex. F5, Sesno Rep., at ¶63. While even that theory has not panned out now that the evidence is in, it is legally insufficient to satisfy the exceptionally demanding common-law malice standard. Accordingly, Dominion’s claim for damages, punitive or economic, fails as a matter of law.

**CONCLUSION**

For these reasons, the Court should grant Fox Corporation's motion for summary judgment.

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