

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSORTIUM FOR INDEPENDENT
JOURNALISM, INC.,

Docket No: 23-cv-07088

Plaintiff,

v.

THE UNITED STATES OF AMERICA; and
NEWSGUARD TECHNOLOGIES, INC.,

Defendants.

AMENDED COMPLAINT

Plaintiff Consortium for Independent Journalism, Inc. (“*Consortium News*” or “CN”) by its attorney, Bruce I. Afran, as and for its Amended Complaint asserts as follows:

PRELIMINARY STATEMENT

In direct violation of the First Amendment, the United States of America and NewsGuard Technologies, Inc. (“NewsGuard”) are engaged in a pattern and practice of labelling, stigmatizing and defaming American media organizations that oppose or dissent from American foreign and defense policy, particularly as to Russia and Ukraine.

This is accomplished by a contract between NewsGuard’s “Misinformation Fingerprints” program and the Department of Defense Cyber Command, an element of the Intelligence Community. Under this agreement, media organizations that challenge or dispute U.S. foreign and defense policy as to Russia and Ukraine are reported to the government by NewsGuard and labelled as “anti-U.S.”, purveyors of Russian “misinformation” and propaganda, publishing “false content” and failing to meet journalistic standards. NewsGuard’s contract with the government requires it “to find *trustworthy* sources”, a provision in violation of the First

Amendment that does not permit the government to vet or clear news sources for their reliability, “trustworthiness” or orthodoxy.

Consortium News and other news organizations have been stigmatized and defamed under the Cyber Command contract. NewsGuard’s warning labels issued under the “Misinformation Fingerprints” program amount to a government-funded advisory as to officially disfavored information, telling readers to “[p]roceed with caution....” when reading or viewing targeted news organization websites, including *Consortium News*. Such labels comprise a statement paid for and facilitated by the United States that such organizations are deemed *unreliable* as news sources. All such acts by NewsGuard, being in conjunction with the United States, are in violation of the First Amendment and have injured the First Amendment rights of *Consortium News* (and other targeted news organizations).

The United States and NewsGuard have declared commentaries or conclusions that challenge or dissent from U.S. government policies as to Russia, Ukraine and related subjects to be “disinformation”, “false content” and Russian propagandizing. NewsGuard’s so-called “brand safety” labels warn the reader or viewer that the targeted news organization “fails to maintain basic standards of accuracy and accountability”, fails to regularly correct errors, does not meet journalistic standards of responsibility and is “anti-U.S.”, assertions that arise because of the government and NewsGuard’s disagreement with the viewpoint and conclusions expressed by the targeted organization. In this manner, NewsGuard and the United States have not only violated the First Amendment but they have defamed *Consortium News*, casting it in a false light by impugning the patriotism and loyalty of CN and its many writers and contributors.

A self-appointed media “safety” company, NewsGuard attaches automatically (and arbitrarily) its electronic “brand safety” or “nutrition” labels to *all* works of a targeted media organization that appear on a NewsGuard subscriber’s search engine and social media platforms, thereby defaming *the entirety of a news organization’s output* and slandering its reputation for integrity. In this way, the entire 20,000-plus archive of *Consortium News*, journalism published since CN's inception in 1995, has been targeted and defamed on NewsGuard’s ratings software, even though NewsGuard and the U.S. have disputed only **six (6) articles** out of tens of thousands published by CN. NewsGuard also publishes periodic reports containing similar information and defamatory content and makes such reports available to the government and its subscribers.

There can be little doubt that NewsGuard’s actions in defaming and stigmatizing CN are performed in concert with the United States. NewsGuard has been in existence since 2018 but did not contact, target or label *Consortium News* until March 2022, *after* its contract with the U.S. Cyber Command came into force. NewsGuard has targeted CN articles concerning 1) the 2014 Ukrainian coup, 2) the influence of neo-Nazism in Ukraine and 3) “overtly genocidal” policies of Ukraine, **the same three topics** that are the subject of NewsGuard’s “Misinformation Fingerprints” project that is under contract with the Cyber Command. Such actions, being financed by the United States, directly violate the First Amendment.

NewsGuard and the U.S. defame *Consortium News* by stating in the warning labels that *Consortium News* publishes “disinformation”, “misinformation”, “false content”, that the organization is “anti-U.S.” and the like. In actuality, what NewsGuard and the U.S. claim to be “false content” and anti-American material are six (6) CN commentaries that challenge or dispute U.S. foreign and defense policies concerning Russia, Ukraine and Syria. Despite its

disagreement with the viewpoint expressed in six (6) articles, NewsGuard has flagged *all of Consortium News's 20,000-plus archive with the defamation and warnings*. NewsGuard targets media groups, including *Consortium News*, as part of a business plan demanding that news organizations retract or “correct” dissenting viewpoints under threat of a negative red flag and “brand safety” warning label or face the defamation and stigmatization of their entire organization and output. News and commentary are protected by the First Amendment and the U.S. and/or NewsGuard as the government’s proxy have no privilege to defame and stigmatize a news organization because they dispute its views or those of its writers on U.S. policy.

A targeted news organization may convert the red flag and the warning label to a favored rating, or avoid the warning label altogether, if it alters its viewpoint or that of its authors and retracts the statements with which NewsGuard and the U.S. take issue. In so doing, NewsGuard, working jointly with the United States, works to achieve a form of censorship designed to compel the removal of viewpoints that challenge policies of the United States and its allies. Labelling commentaries as “false content”, “disinformation” or Russian propaganda, NewsGuard and the United States seek to silence or abridge debate and commentary.

NewsGuard’s targeting of dissenting military and intelligence views is an attempt to impose self-censorship within media organizations by external coercion. As a part of its work with the United States, NewsGuard’s actions violate the First Amendment, as described in **Count I**; see ¶¶ 136-157, *infra*.

In that the defamatory statements are directed to the integrity of news organizations that depend on a reputation for integrity and commitment to journalistic excellence, NewsGuard’s

actions as described in this Amended Complaint, and more particularly in **Count II**, see ¶¶ 158-193, are defamatory *per se*.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a non-profit corporation organized under the laws of the State of Virginia that provides original news and commentary and articles by guest writers through its internet-based platform operating under the trade names *Consortium News* (CN) or *CN Live!* Plaintiff edits and produces its news content in Virginia or Washington, D.C. or at other locations but has no offices in the State of New York.

2. Defendant NewsGuard is a corporation organized under the laws of Delaware with its principal office and place of business in the Southern District of New York at 25 W. 52nd Street, 15th Floor, New York, NY 10019.

3. Defendant United States has contracted through the Department of Defense with NewsGuard to identify media organizations, domestic or foreign, that repeat, publish, or disseminate what the government and NewsGuard claim to be Russian government “narratives” and propaganda as to the Ukraine war and related matters; the United States is working jointly or in concert with NewsGuard (or has made NewsGuard its agent) to identify such entities and limit their dissemination of information or viewpoints; the United States has a close nexus with NewsGuard in this work or has significantly encouraged such acts by NewsGuard.

4. As to **Count I**, jurisdiction is premised on 28 U.S.C. 1331 based on a federal question arising under the First and Fifth Amendments to the Constitution of the United States. To the extent necessary, and in the alternative, as to **Count II** jurisdiction is premised

on 28 U.S.C. 1332(a)(1) based on the diversity of citizenship of the plaintiff and NewsGuard and that the amount in controversy exceeds Seventy-five thousand dollars (\$75,000).

5. Venue is properly in the Southern District of New York based on the stipulation in the Misinformation Fingerprints contract that NewsGuard's work under that agreement is to be performed in this district, see **Exhibit J**, hereto, and that NewsGuard's principal place of business is in this District.

FACTUAL BACKGROUND

THE HISTORY AND BACKGROUND OF CONSORTIUM NEWS

6. *Consortium News* (a/k/a "CN") is an internet-based news, commentary and analysis provider dedicated to producing independent content or publishing guest content of an independent nature, frequently challenging U.S. governmental or foreign policy.

7. *Consortium News* was founded in 1995 by the late Robert Parry, a highly respected journalist who was a former investigative reporter for the Associated Press and *Newsweek*. Parry won the George Polk Award for his work on the Iran-Contra affair that revealed the identity and role of Oliver North in fomenting a U.S. operation under President Ronald Reagan to fund the Contras, a Nicaraguan militia whose support by the U.S. was barred by Congress under what was known as the Boland amendment.

8. In 2015, Parry was awarded the I.F. Stone Medal for Journalistic Independence by Harvard University and in 2017 the Martha Gellhorn Prize for Journalism.

9. Parry began *Consortium News* after he found that significant and important stories were suppressed by his editors at commercial news organizations.

10. Parry sought to provide a publication for a consortium of journalists whose work, often critical of U.S. policy, was treated in a similar fashion by their editors.

11. To achieve the objective of establishing an independent forum for journalism, Parry created the Consortium for Independent Journalism, a non-profit organization that publishes *Consortium News* and *CN Live!*

12. *Consortium News* does not receive or accept funding from any government, corporation or advertiser but is funded by its readers and interested private donors.

13. *Consortium News*'s current editor-in-chief, Joe Lauria, is a veteran journalist with decades of experience in major media organizations with his first professional appointment being a position with *The New York Times* in 1975. In 1990 he began reporting on international affairs from the United Nations in New York for the *Daily Mail* and the *Daily Telegraph* in Britain, and later for *The Boston Globe* and *The Wall Street Journal*. Lauria has also been an investigative reporter for the *Sunday Times* of London "Insight" team and has made numerous media appearances on the BBC World Service, CNN, the PBS NewsHour, C-Span and ABC's *Good Morning America*.

14. Lauria has received journalism awards from the Center for Public Integrity and the United Nations Correspondents Association and is co-author of a book, *A Political Odyssey: The Rise of American Militarism and One Man's Fight to Stop It*, with the late, former U.S. Senator Mike Gravel, who had been a member of the *Consortium News* board.

15. *Consortium News*'s board members include journalist and filmmaker John Pilger, who was twice named as Britain's journalist of the year and worked as a correspondent

for *The Daily Mirror* and as a columnist at *The New Statesman*; Pulitzer Prize winner Christopher Hedges; and other respected journalists, along with the late Daniel Ellsberg.

16. *Consortium News* is today an organization of journalists, academics, freelance writers and former intelligence agency professionals who have worked at the highest and most respected levels of public life.

17. CN's deputy editor Corinna Barnard is a former *Wall Street Journal* and Dow Jones Newswire editor. CN's columnists include a former Asia editor for *The International Herald Tribune*; a professor of Middle East politics at the University of California; and have included two former Central Intelligence Agency officials, one of whom delivered Oval Office briefings to Presidents Ronald Reagan and George H.W. Bush; the other led the capture of al-Qaeda militant Abu Zubaydah.

18. *Consortium News* also operates a webcast called *CN Live!*, whose executive producer, Cathy Vogan, is an award-winning film-maker and former lecturer at the University of Paris VIII, the European School of Visual Arts, Ecole du Frenois in Lille, and the Kunsthochschule in Cologne and has taught at tertiary institutions in Australia including the University of NSW, the Australian Film, Television and Radio School, the University of Western Sydney and Sydney Film School. She has also trained staff and consulted on behalf of Apple Australia at the Australian Broadcasting Corporation and other major networks around the country.

CYBER COMMAND'S CONTRACT WITH NEWSGUARD

19. In September 2021, the Department of Defense awarded NewsGuard a contract for its "Misinformation Fingerprints" program in the amount of \$749,387 with a start date of

9/7/21 and an end date of 12/08/22; see Small Business Administration Grant (SBIR), **Exhibit J** annexed hereto.

20. Under the “Misinformation Fingerprints” contract, NewsGuard is paid to identify media organizations that provide information or reportage concerning Ukraine and Russia that is contrary to the viewpoints of the U.S., its intelligence agencies and U.S. allies. NewsGuard’s labelling, stigmatizing, defaming and targeting of *Consortium News* in connection with articles on Russia and Ukraine, is within the scope of its contract with the United States and is performed as a part of that contract.

21. NewsGuard has admitted that it is working for, and in conjunction with, the Cyber Command, an element of the U.S. Intelligence Community; Cyber Command is a constituent element of the U.S. Army Intelligence and Security Command (INSCOM).¹

22. NewsGuard’s admission that it is working with the Intelligence Community came about earlier this year in an email dated March 10, 2023 that was released to the media from NewsGuard’s co-founder Gordon Crovitz who acknowledged that NewsGuard is working directly with the Cyber Command *and with U.S. and allied officials* to identify media activity, what Crovitz called “false narratives” that contradict U.S. positions and that of its allies. Crovitz was explicit in admitting that NewsGuard is acting at the behest of the Intelligence Community as he stated, in pertinent part:

¹ The “Intelligence Community” is a statutory designation of a federation of United States intelligence offices recognized under 50 U.S.C. §3003(4) that includes “[t]he intelligence elements of the Army,…” *Id.* at §3003(4)(H). As a unit of INSCOM, an army intelligence agency, the Cyber Command is an element of the “Intelligence Community”, as defined by statute.

“[A]s is public, our work for the Pentagon’s Cyber Command is focused on the identification and analysis of information operations targeting the US and its allies conducted by hostile governments, including Russia and China. Our analysts alert officials in the US and in other democracies, including Ukraine, about new false narratives targeting America and its allies, and we provide an understanding of how this disinformation spreads online. We are proud of our work countering Russian and Chinese disinformation on behalf of Western democracies.”

See Email of Gordon Crovitz, March 10, 2023 to Matthew Taibbi, annexed as **Exhibit K**, annexed hereto.

23. As **Exhibit K** shows, NewsGuard is **not** the independent “journalistic” organization it holds itself out to be in its communications with CN, other news organizations and the public. To the contrary, Crovitz acknowledged in the email that NewsGuard is closely associated with the U.S. intelligence and defense community.

24. In the course of its contract with the Pentagon, NewsGuard is acting jointly or in concert with the United States to coerce news organizations to alter viewpoints as to Ukraine and Russia, imposing a form of censorship and repression of views that differ or dissent from policies of the United States and its allies.²

NEWSGUARD CONCEALS ITS RELATIONSHIP WITH THE INTELLIGENCE COMMUNITY FROM TARGETED NEWS ORGANIZATIONS

25. When it contacts targeted media organizations, NewsGuard claims falsely to be a news organization.

² The close relationship between NewsGuard and the Intelligence Community can also be seen in the fact that NewsGuard’s Board and Advisory Board include individuals who have served at the highest levels in the Intelligence Community including Tom Ridge (former Secretary of Homeland Security), General (Ret.) Michael Hayden (former Director of the CIA, former Director of the National Security Agency, former Principal Deputy Director of National Intelligence), Anders Fogh Rasmussen, former secretary general of NATO and Don Baer, former White House Communications Director (Clinton administration). Former Homeland Security Secretary Tom Ridge is also an investor in NewsGuard.

26. This deception is accomplished by NewsGuard's "reviewer" contacting the targeted organization by calling himself "a *reporter* with NewsGuard", see **Exhibit C**, giving rise to the impression that NewsGuard is a journalistic endeavor when, at all relevant times, it was under contract to provide intelligence to the United States Cyber Command as to media organizations that spread Russian "misinformation". See **Count I**, *infra*.

27. NewsGuard is functionally an intelligence proxy of the United States while claiming to be an independent journalistic organization. As such, NewsGuard does not express its own opinions as that of a normal news organization, but rather promotes views arrived at in conjunction with or at the behest and approval of the government.

28. By falsely representing itself to be a journalistic endeavor, NewsGuard obtains both cooperation and information from targeted news organizations.

29. Pretending to be a newspaper, NewsGuard induces targeted news organizations, including *Consortium News*, to provide information as to their practices, governance, viewpoints on Russia-related issues, donors and other information, without disclosing that it has a simultaneous contractual obligation to provide such information to the Cyber Command.

30. In seeking information about targeted news organizations and in demanding retractions of challenged articles, NewsGuard does not disclose to the targeted media group that it is acting under a contract with a U.S. intelligence agency and did not make such disclosure to *Consortium News*.

NEWSGUARD’S COERCIVE AND DEFAMATORY PRACTICES

31. NewsGuard is a private for profit corporation operating in New York and is in the business of providing what it self-declares to be “brand safety” validation services for its approximate forty thousand (40,000) subscribers who pay \$4.95 monthly (or some similar fee as periodically increased) to receive “ratings” as to the “safety” of news and other content produced by organizations whose articles appear on computer searches. NewsGuard also provides services to institutional, governmental and other clients, including libraries and universities, who pay NewsGuard for subscription and reporting services.

32. NewsGuard provides, among other services, what it calls “Nutrition Labels” for rating the “trust”, reliability and ethics of news organizations:

Each site is rated using nine basic, apolitical criteria of journalistic practice. Based on the nine criteria, each site gets a trust score of 0-100 points and a detailed “Nutrition Label” review explaining who is behind the site, what kind of content it publishes, and why it received its rating — with specific examples of any trust issues our team found.

<https://www.newsguardtech.com/solutions/newsguard/> (last downloaded August 7, 2023).

33. NewsGuard states that it provides coverage in this manner for “all the news sources that account for 95% of online engagement.” *Id.*

34. NewsGuard has historically attached to a subscriber’s web search a red flag or shield that opens to a warning that viewers or readers should “Proceed with caution” because

a given news site 1) fails to meet journalistic standards, 2) fails to make corrections of false facts and 3) purveys false information, among other references.³

35. Such labels are attached to the heading of any article on a NewsGuard subscriber's screen for any search reporting a result from a targeted news provider.

36. NewsGuard provides this same service on public, private and university library computers where the library has subscribed to NewsGuard's service, as well as for corporate and governmental subscribers.

37. NewsGuard arbitrarily and falsely attaches such ratings to the *entire* production of a news organization, even where NewsGuard has taken issue with only one or a small number of the organization's productions. In this way, any article produced by a targeted news entity will have attached to it the NewsGuard warning label even if NewsGuard never read the tagged article or if NewsGuard had no dispute with the particular article.

38. In other words, based on its disagreement with the content of a single article or a handful of articles concerning a limited subject, *or even just a single sentence in an article*, NewsGuard has put in motion a deliberate and intentional system by which an *entire* news organization's output and production is tagged as "anti-U.S."; as spreading false content, false claims and false information; failing to meet journalistic standards, along with other defamatory material.

³ NewsGuard recently shifted to a blue flag or symbol in place of the red flag. During the period of the events described in this complaint, NewsGuard generally used the red flag symbol. Upon information and belief, aside from the change in color no other change has occurred in NewsGuard's publication, review, labelling or ratings methodology.

39. NewsGuard issues periodic reports to its corporate and governmental subscribers containing similar information; for example, NewsGuard issues a report identifying so-called “Russian propaganda” outlets through its “Misinformation Fingerprints” program that is the subject of its contract with the Department of Defense.

40. NewsGuard has contracted with Microsoft that has attached the service as an option for Microsoft customers and NewsGuard has an agreement with the American Federation of Teachers to make available the NewsGuard software to educators and students.

41. NewsGuard carries out its business by a coercive practice of having a “reporter” contact a targeted news organization, claiming it is “reviewing” the organization because of its “publication of false content” and demanding to know if the targeted organization will “correct” the offending material. If the targeted news organization does not agree to withdraw or correct the material, NewsGuard goes forward with publication of its red flag and warning that readers should “proceed with caution”, that the organization fails to meet journalistic standards, fails to correct errors and publishes false information, along with similar references.

42. At no time does NewsGuard disclose to the targeted news organization that it is operating under a contract with an element of the Intelligence Community.

43. As to a news organization that has refused to yield to NewsGuard’s pressure, the published warning will consist of language, *inter alia*, as follows:

“Proceed with caution: This website generally fails to maintain basic standards of accuracy and accountability.” See **Exhibit A** hereto.

44. News organizations that refuse to make the changes demanded by NewsGuard are labelled and tagged in their entire online production.

45. News organizations are thus coerced by force into withdrawing or modifying their published material.

46. This process is designed and intended to force targeted news organizations into withdrawing legitimate news and commentary.

47. In the case of Russia-related information, NewsGuard acts as an agent of the United States to coerce news organizations into withdrawing commentary and news that challenges U.S. policies and that of its allies.

DEFAMATION AS TO CONSORTIUM NEWS

48. NewsGuard defamed plaintiff *Consortium News* on or about August 11, 2022 and on different dates thereafter by attaching to subscriber search results the red flag and warning described above.

49. The red flag is attached to all *Consortium News* url search results going back to 1995 on subscriber search engines as per **Exhibit A**, a page from a Google search as to “Robert Parry *Consortium News*”. See document appended to **Exhibit A**, hereto.

50. When the subscriber moves their cursor over the red flag (changed in later versions to blue), a screen is produced by NewsGuard covering the subscriber’s search result with the defamatory material, as described below; see also **Exhibit A**, hereto.

51. NewsGuard’s “Nutrition Label” overlays the search list where the *Consortium News* article appears and contains the following defamatory statements about *Consortium*

News:

“A website that covers international politics from a left-wing, **anti-U.S. perspective that has published false claims about the Ukraine-Russia war and other international conflicts**”.

See document appended to **Exhibit A** [emphasis added].

52. The NewsGuard “Nutrition Label” also defames *Consortium News* by telling NewsGuard subscribers:

“Proceed with caution: This website fails to adhere to several basic journalistic standards”. *Id.*

53. The “Nutrition Label” enhances the defamatory material by placing a red “X” next to certain “credibility” items, as shown in **Exhibit A**; the red “X” is understood to mean, and is intended to mean, that *Consortium News* fails to meet such standards.

54. As seen on **Exhibit A**, placement of the red “X” is a statement by NewsGuard that *Consortium News* does “repeatedly publish false content”, fails to “regularly correct[] or clarify[] errors” and fails to “[g]ather [] and present[] information responsibly”. See “Nutrition Label” re *Consortium News*, appended to **Exhibit A**.

55. These are statements of fact that are false and defamatory *per se* or cast *Consortium News* in a false light.

56. NewsGuard has attached such labelling and the defamatory content to any *Consortium News* article ***regardless of whether or not NewsGuard has read or reviewed the article or search item and in the absence of any claim by NewsGuard of any falsity or other defect in the particular article or search item.***

57. NewsGuard has disputed content in only **six (6)** CN articles but attaches the defamatory material **to each and every one** of the twenty thousand articles and videos in CN's archives that may appear on a subscriber's search result.

58. NewsGuard's label, red flag and defamatory content are also attached to any full volume of *Consortium News* that appears on a search result, as shown by the annexed search on DuckDuckGo, *see **Exhibit A** hereto*, that shows the defamatory labeling as to the full volume of "*Consortium News* - Volume 27, Number 236", irrespective of the content of any article.

59. The entirety of CN's production on a Twitter search is labelled in this same manner. **Exhibit A**, hereto.

60. Even when CN Editor-in-Chief Lauria's name comes up on a search result identifying his professional association, the NewsGuard red warning label and mark appears. **Exhibit A**.

61. NewsGuard's warning appears on any and all subjects and articles published on *Consortium News*, even though NewsGuard had no complaints as to the contents of these articles as, for example: 1) a CN article reviewing a film probing the role of British foreign policy in the Manchester terror attack; 2) an article on "Lithium Power Politics" referring to the politics behind the extraction of a mineral used in cell phones and other devices; 3) an article on U.S. and Israeli attitudes towards the Iran nuclear deal. *See generally* documents appended to **Exhibit A**. ***NewsGuard has raised no objections to the content of these articles, but still applies the defamatory material next to such articles as they appear on any search result.***

62. All *Consortium News* search results are given this defamatory treatment.

63. The labelling is so all encompassing that even a *Consortium News* holiday greeting for Thanksgiving has been labelled with the defamatory material, as well as a 1995 article on an old political issue, “The October Surprise”, which was one of the first articles CN ever published. See **Exhibit L**, hereto.

64. NewsGuard even applies the defamatory labelling to articles CN reprints from *other* news sources, even though NewsGuard has never objected to or applied its warning labels to the originally published versions. For example, when an article appears originally on *Common Dreams*, which receives a 100% rating from News Guard, an exact, word-for-word *version* reprinted on CN **receives the NewsGuard warning**. See **Exhibit O**, hereto (showing a “100%” rating for the *Common Dreams* article on the Ukraine war and a “47.5%” rating for the identical article when it is re-printed on *Consortium News*; both ratings open to a “Nutrition Label”, also attached, but the *Consortium News* label contains the defamatory material discussed in this Amended Complaint while the *Common Dreams* label contains no such material, **for the very same article**).

65. This defamatory labeling of identical text re-printed from other sources demonstrates that NewsGuard and the U.S. are not targeting the *content* of a given article but are targeting specific news organizations, such as *Consortium News*, that challenge or dissent from U.S. policies.⁴

⁴ The articles on *Common Dreams* and *Consortium News* appear on the following links and are identical in their text. See <https://www.commondreams.org/opinion/ukraine-and-the-tunnel-at-the-end-of-the-light>; <https://consortiumnews.com/2023/02/28/ukraine-the-tunnel-at-the-end-of-the-light/>.

66. NewsGuard applies the red flag, labelling and defamatory content to all *Consortium News* output going back to 1995 on any subject, automatically, and to any future CN publication, *without review or any objection by NewsGuard to the particular article.*

67. *Consortium News* has approximately 20,000 published articles in its archive that appear on internet searches and all are subject to the defamatory tagging described above.

68. It is a major part of CN's business to have this archive available on the internet to any interested viewer or reader *and the entirety of the archive is now subject to NewsGuard's defamatory tagging and labelling.*

69. In this same way, NewsGuard is labelling all *CN Live!* webcast segments *even though NewsGuard has never said it downloaded or accessed any segments from CN Live!*, nor has NewsGuard informed CN of any concerns or issues it sees with any *CN Live!* segments.

70. NewsGuard's labelling of the entirety of CN's production, when it has reviewed only six (6) articles, is arbitrary, capricious, wanton, malicious and without regard to the truth of the matters expressed.

NEWSGUARD'S CLAIMS OF "FALSE CONTENT" AS TO THE SIX (6) ARTICLES PUBLISHED IN 2022 AND 2023

71. NewsGuard first brought forward its claims that CN publishes "false content" on March 25, 2022 when NewsGuard's employee Zachary Fishman informed CN that NewsGuard was reviewing CN about, among other matters, "its publication of *false content*". See Email of Zachary Fishman to info@consortiumnews.com, dated March 25, 2022, annexed to **Exhibit C**, hereto [emphasis added].

72. Fishman made the allegation that CN published “false content” *before* speaking with CN, *before* identifying the articles that were “false” and *before* giving CN any chance to respond.

73. In an email by Fishman to CN Editor-in-Chief Joe Lauria dated March 28, 2022, **Exhibit C**, NewsGuard identified the five (5) articles for which it claims CN published “false content”; these are summarized below.⁵

Defamation as to CN’s Commentary as to the 2014 Coup in Ukraine

74. In the Fishman email, NewsGuard identifies as a “false” fact the following statement (in bold type below) from the February 2022 CN article “Ukraine: Guides to Reflection”:

“Hence, the inflation of Russian behavior in Ukraine (**where Washington organized a coup against a democratically elected government** because we disliked its political complexion) and Syria (where Russia’s intervention is at the request of the established government while the U.S. commitment to occupying parts of it has no legal basis).”

Exhibit C, Email of Zachary Fishman to info@consortiumnews.com, March 28, 2022 [bold type is in NewsGuard’s original email].⁶

⁵ After CN’s Complaint was filed (ECF 3), NewsGuard emailed CN on August 18, 2023 as to a sixth article, “Ukraine Timeline Tells the Story”. That article disputed the 2016 allegations that Russia acted to advance the Trump campaign and was published by CN on June 30, 2023. NewsGuard did not explain why it chose the week *after* CN filed its court action to object to an article published six weeks earlier concerning issues from nearly seven years ago. Based on the prior defamation, CN did not respond and NewsGuard issued a new defamatory label as to CN’s 2023 article, again defaming CN or casting it in a false light. See ¶¶ 118-135, *infra*.

⁶ The *Consortium News* article that Fishman identified can be found at **Exhibit D**, Article, “Ukraine: Guides to Reflection”, *Consortium News*, February 1, 2022; <https://consortiumnews.com/2022/02/01/ukraine-guides-to-reflection/> (last downloaded August 7, 2023).

75. Based on the single statement that “Washington *organized a coup...*”, NewsGuard issued a red flag and label against the entire *Consortium News* organization claiming it is “anti-U.S.” and publishes “false content”, along with the other defamatory statements described above.

76. NewsGuard’s statements are defamatory; *Consortium News* has published no “false content”, did not fail to correct errors and did not fail to meet proper journalistic standards but published a **commentary reflecting a widely held view of the U.S. role in the 2014 coup in Ukraine.**

77. For example, to avoid the red flag and label, CN Editor Lauria pointed out to NewsGuard that CN’s commentary was supported by the BBC’s report of a leaked 2014 telephone call between U.S. Assistant Secretary of State Victoria Nuland and U.S. Ukraine Ambassador Geoffrey Pyatt, in which the two engaged a discussion in detail about the role the U.S. was playing in creating and designing a government to replace the elected Ukrainian government including: 1) who will make up the new Ukraine government weeks *before* then President Viktor Yanukovich was overthrown; 2) that the U.S. would be “midwifing” a new government; 3) the role that Vice President Joe Biden would play in creating the new government; and 4) that the U.S. was setting up meetings with Ukrainian politicians to facilitate the new government. BBC wrote of the leaked call:

“[T]his transcript suggests that *the US has very clear ideas about what the outcome should be and is striving to achieve these goals.*”

Exhibit E, Article, “Ukraine crisis: Transcript of leaked Nuland-Pyatt”, BBC News, February 7, 2014; <https://www.bbc.com/news/world-europe-26079957>, (last downloaded August 8, 2023).

78. Like *Consortium News*, *The Guardian* reported that the U.S. “organized” the Ukraine coup, going even further than *Consortium News*, calling the 2014 revolution “a U.S.-selected” “unconstitutional takeover” and the “imposition” of a new government to replace a democratically-elected government:

When the Ukrainian president was ***replaced by a US-selected administration***, in an ***entirely unconstitutional takeover***, politicians such as William Hague brazenly misled parliament about the legality of what had taken place: ***the imposition of a pro-western government*** on Russia's most neuralgic and politically divided neighbour.

See **Exhibit Q**, Seumas Milne, “It’s not Russia that's pushed Ukraine to the brink of war”, *The Guardian*, 30 Apr 2014 [emphasis added].

79. In this same vein, *Progressive.org* published a commentary on February 1, 2022 (*only a few weeks before the Consortium News article*), in which *Progressive* described the the U.S. role in “managing” the coup, that the U.S. “backed” the 2014 coup and “hand-picked” the new government. Specifically, *Progressive* stated that it was a

— “***U.S.-backed coup***”

— that “[t]he ***U.S. role in managing the coup*** was exposed by a leaked 2014 audio recording of... Victoria Nuland and U.S. Ambassador Geoffrey Pyatt working on their plans, which included sidelining the European Union and ***shoehorning in U.S. protege Arseniy Yatsenyuk as prime minister***...”

— that the new government was comprised of “Nuland’s ***hand-picked*** puppets...”

See **Exhibit R**, progressive.org, Nicolas J S Davies, Medea Benjamin, “The United States Is Reaping What It Sowed in Ukraine”, February 1, 2022 [emphasis added].

80. The *Christian Science Monitor* also published a commentary that the Nuland tape demonstrated that the U.S. was actively “molding” the change in government, as the newspaper stated: “This was not a conversation analyzing unfolding events and how to respond to what comes next. This was about ***molding a situation according to US***

*interests.” See **Exhibit T**, *Christian Science Monitor*, Dan Murphy, “Amid US-Russia tussle over Ukraine, a leaked tape of Victoria Nuland”, February 6, 2014 [emphasis added].*

81. Other writers have shared the view that the U.S. played an integral role in the 2014 coup. For example, Catholic University of America’s “Center for the Study of Statesmanship” in an article headed “The American Mess in the Ukraine”, see **Exhibit S**, stated that the U.S. “backed” and “orchestrated” the coup:

In early 2014, civil war broke out in the Donbass *after a US-backed* coup d’état had ousted the Russian-leaning government in Kiev. *The coup was clearly orchestrated by Nuland*, who was then assistant secretary of state for European affairs; she probably had the CIA’s assistance.

See **Exhibit S**, William S. Smith, “The American Mess in the Ukraine”, Center for the Study of Statesmanship [emphasis added].

82. As shown by the *BBC*, *The Guardian*, *Progressive.org* and *Christian Science Monitor* articles, and others that have been published, CN’s commentary that the U.S. had “organized” a coup is derived from a reasonable interpretation of known facts and of recent history, a viewpoint shared by other reputable news organizations, and should not have been defamed by NewsGuard as the publication of “false content”, misinformation, failure to correct errors, failure to meet journalistic standards and the rest of the defamatory material in NewsGuard’s red flag and “Nutrition Label”, as set forth in **Exhibit A**.⁷

⁷ In his email, Fishman stated his view that, “The U.S. **supported** the Maidan revolution...in 2014...” See Fishman email to CN, March 28, 2022, **Exhibit C** [emphasis added]. Simply because NewsGuard believes the U.S. “*supported* [a] revolution”, rather than “organized” a coup as CN and other commentators believe, does not give NewsGuard the right to defame *Consortium News* by declaring that it publishes “false content” and the other defamatory statements.

83. Accordingly, the red flag, “Nutrition Label” and associated text annexed as **Exhibit A** published by NewsGuard stating that *Consortium News* publishes “false” facts and misinformation, that CN fails to correct errors, that CN does not meet journalistic standards or that it fails to gather information responsibly, is defamatory; in addition, such conduct violated CN’ First Amendment rights in that it is undertaken jointly or in concert with the United States or is paid for or significantly encouraged by the U.S. to punish or discourage speech that is contrary to U.S. policy positions.

Defamation as to CN’s Commentary as to “Overtly Genocidal Policies” in Ukraine

84. In NewsGuard’s March 28, 2022 email, Fishman stated that CN published “false or misleading claims” in a March 2022 article entitled “A Proposed Solution to the Ukraine War”. To support such claim, NewsGuard quotes the following passage from the CN commentary:

“The government of Ukraine has denied human rights and political self-determination to the peoples of the Donbass. Some 13,000 people have died during the eight years since the 2014 coup, according to the United Nations. **The Ukrainian government has overtly genocidal policies toward Russian minorities.**”

See Email of Zachary Fishman to info@consortiumnews.com, dated March 28, 2022 [bold type is in NewsGuard’s original email]; **Exhibit C**, hereto.

85. NewsGuard has declared that the reference to “overtly genocidal policies” of the Ukrainian government is “false content” because of NewsGuard’s belief that three agencies — the International Criminal Court (ICC), the UN High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) — “have found no evidence of a genocide in Donbas”. Email of Fishman to info@consortiumnews.com, March 28, 2022; **Exhibit C**.

86. Here, again, NewGuard has defamed CN in that *Consortium News* has published no “false content”, did not fail to correct errors and did not fail to meet proper journalistic standards but, rather, published a commentary reflecting an analysis shared by reputable writers and organizations concerning ethnically-directed violence in Ukraine.

87. Even Fishman acknowledged in his March 28, 2023 email that the ICC “found that the acts of violence allegedly committed by the Ukrainian authorities in 2013 and 2014 **could constitute an ‘attack directed against a civilian population,’**”, in other words, “genocidal policies”, just as CN’s writer reported; *see* Fishman email, March 28, 2022, annexed as **Exhibit C** hereto [emphasis added].

88. Along these same lines, Article II of the 1951 Genocide Convention, defines genocide in a manner similar to that conceded by Fishman in his email, i.e., the intentional targeted killing of “a civilian population”. In this respect, the Convention defines genocide, in pertinent part, as follows:

“...genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) ***Killing members of the group;***

(b) ***Causing serious bodily or mental harm to members of the group;***”

See Convention, Entry into force, 12 January 1951 [emphasis added].

89. A respected authority, the late Prof. Stephen Cohen, has concluded that fascist attacks on “gays, Jews, elderly ethnic Russians, and other ‘impure’ citizens are widespread throughout Kyiv-ruled Ukraine...”, conduct that supports the viewpoint of “overtly genocidal policies” expressed in the CN article and that reasonably fits within the 1951 Convention’s definition of “genocide”. *See* ¶100, *infra*, *citing* Stephen Cohen, “America’s

Collusion With Neo-Nazis”, The Nation, May 2, 2018; *see also* “John Pilger: War in Europe & the Rise of Raw Propaganda”, February 17, 2022; <https://consortiumnews.com/2022/02/17/war-in-europe-the-rise-of-raw-propaganda/> (last downloaded August 7, 2023);

Exhibit F, hereto.

90. Therefore, CN’s commentary as to “overtly genocidal policies” is a well-reasoned conclusion, shared by others including the well-respected Prof. Cohen, and CN should not have been defamed by NewsGuard as publishing “false content” or “false” facts, along with the other defamatory material in NewsGuard’s “Nutrition Label” and red flag warnings.

91. Accordingly, the red flag, “Nutrition Label” and associated text annexed as **Exhibit A** published by NewsGuard stating that *Consortium News* publishes “false” facts and misinformation, that CN fails to correct errors, that CN does not meet journalistic standards or that it fails to gather information responsibly, is defamatory; in addition, such conduct violated CN’s First Amendment rights in that it is undertaken jointly or in concert with the United States, or is paid for or significantly encouraged by the U.S., to punish or discourage speech that is contrary to U.S. policy positions.

Defamation as to CN’s Report that Ukraine’s Government was “Infested” by Nazis

92. In the Fishman email, NewsGuard pointed to a third CN commentary published in March 2022 discussing the Ukraine-Russia war, headed “PATRICK LAWRENCE: Imperial Infantilism”, particularly a sentence in this article stating that “... NATO is now arming a **Nazi-infested regime...**” See **Exhibit C**, Email of Zachary Fishman to info@consortiumnews.com, dated March 28, 2022 [emphasis in NewsGuard original email].

93. NewsGuard also took issue with another CN commentary in February 2022 by writer John Pilger that stated that the “coup regime, **infested with neo-Nazis**, launched a campaign of terror against Russian-speaking Donbass, which accounts for a third of Ukraine’s population.” **Exhibit C**, Email of Fishman to info@consortiumnews.com, March 28, 2022 [emphasis in NewsGuard original email]; *see also* “Pilger: War in Europe & the Rise of Raw Propaganda”, *Consortium News*, February 17, 2022, **Exhibit F**.

94. Here again, the two CN articles merely represent a viewpoint as to the presence and influence of neo-Nazis in Ukraine, and should not have been defamed as “false contents”, failure to meet journalistic standards and the like by NewsGuard.

95. Even the Fishman email concedes that “Radical far-right groups in Ukraine **do represent a 'threat to the democratic development of Ukraine,**’ according to a 2018 Freedom House report.” *See* Email of Fishman to info@consortiumnews.com, March 28, 2022; **Exhibit C**, hereto [emphasis added].

96. Despite making this concession, NewsGuard persists in claiming that CN’s commentary that the regime is “infested with neo-Nazis” is a “false” fact because the radical far right has only a small percentage of the vote and “no plausible path to power”. *Id.*

97. In fact, the Freedom House report states bluntly that “right-wing nationalism and extremism in modern-day Ukraine **poses a threat to the democratic development of society**” that it is no longer marginalized and that “the far right has managed to achieve a certain degree of success by “riding” the patriotic wave. Nationalist-radical symbolism and rhetoric in the public sphere has become legitimized”, among other statements. *See* <https://>

freedomhouse.org/report/analytical-brief/2018/far-right-extremism-threat-ukrainian-democracy [emphasis added].

98. Obviously, CN's writers' views as to the influence of neo-Nazis in Ukraine is **not** a basis for NewsGuard defaming *Consortium News* as the purveyor of "false content" since CN's writers' conclusions as to the power of the far-right in Ukraine's government are a matter of interpretation and inference and that is shared by other reputable news organizations and writers, including Freedom House.

99. For example, the Atlantic Council in 2018 agreed that the presence of neo-Nazis in Ukraine *does* pose a significant threat to democracy even if they do not garner many votes, calling the low voting turnout for neo-Nazis in Ukraine a "red herring":

"It's not extremists' electoral prospects that should concern Ukraine's friends, but rather the state's unwillingness or inability to confront violent groups and end their impunity."

See **Exhibit G**, "Ukraine's Got a Real Problem with Far-Right Violence (And No, RT Didn't Write This Headline)", *Atlantic Council*, June 20, 2018; <https://www.atlanticcouncil.org/blogs/ukrainealert/ukraine-s-got-a-real-problem-with-far-right-violence-and-no-rt-didn-t-write-this-headline/> (last downloaded August 10, 2023)[emphasis added].

100. In fact, the Pilger article published by CN describes fascist activity by Ukraine's neo-Nazis including beatings and assaults on gays, Jews and elderly Russians by "neo-fascists" and quotes the late Professor Cohen about the similarities between the World War II-era Ukrainian Nazis and the more recent wave of "neo-fascist" assaults in Ukraine:

"The pogrom-like burning to death of ethnic Russians and others in Odessa reawakened memories of Nazi extermination squads in Ukraine during World War II. [Today] storm-like assaults on gays, Jews, elderly ethnic Russians, and other 'impure' citizens are widespread throughout Kyiv-ruled Ukraine, along with torchlight

marches reminiscent of those that eventually inflamed Germany in the late 1920s and 1930s ...

“The police and official legal authorities do virtually nothing to prevent these neo-fascist acts or to prosecute them. On the contrary, Kyiv has officially encouraged them by systematically rehabilitating and even memorializing Ukrainian collaborators with Nazi German extermination pogroms, renaming streets in their honor, building monuments to them, rewriting history to glorify them, and more.”

See John Pilger: War in Europe & the Rise of Raw Propaganda, February 17, 2022; <https://consortiumnews.com/2022/02/17/war-in-europe-the-rise-of-raw-propaganda/> (last downloaded August 7, 2023); **Exhibit F**, hereto.

101. Among other published articles, Reuters in 2018 reported on “the virulent far-right extremism *that has been poisoning* Ukrainian politics and public life...” and noting “far-right vigilantes who are willing to use intimidation and even violence to advance their agendas, and who often do so with the tacit approval of law enforcement agencies.” *See* Reuters, Josh Cohen, “Commentary: Ukraine’s neo-Nazi problem”, March 19, 2018. This is certainly a commentary similar to CN’s as to the reach and influence of neo-Nazi’s in Ukraine and their impunity. *See* <https://www.reuters.com/article/us-cohen-ukraine-commentary/commentary-ukraines-neo-nazi-problem-idUSKBN1GV2TY> [emphasis added].

102. Even the U.S. Congress has recognized the dire threat posed by Ukraine’s neo-Nazis. In 2018, Congress adopted a spending bill that banned all aid to the Azov Battalion because this Ukrainian militia group was known for attracting neo-Nazis and was integrated into the Ukrainian armed forces. *See* “Congress bans arms to Ukraine militia linked to neo-Nazis”, *The Hill*, March 27, 2018; <https://thehill.com/policy/defense/380483-congress-bans-arms-to-controversial-ukrainian-militia-linked-to-neo-nazis/> (last downloaded August 9, 2023).

103. In March 2022, at the same time as the *Consortium News* articles, Cable News Network (CNN) reported that the Azov Battalion was a significant Nazi presence in Ukraine, had been integrated into Ukraine's military structure and was a key element of its defense against Russia. See CNN, "A far-right battalion has a key role in Ukraine's resistance. Its neo-Nazi history has been exploited by Putin", March 30, 2022; <https://www.cnn.com/2022/03/29/europe/ukraine-azov-movement-far-right-intl-cmd/index.html>; (last downloaded August 9, 2023).

104. Other news outlets (such as the BBC and NBC) have reported on the infiltration of neo-Nazis into Ukrainian society and government (NBC reported that the neo-Nazi Svoboda party in 2014 received nearly one-quarter of the seats in the cabinet; see e.g. <https://www.nbcnews.com/storyline/ukraine-crisis/analysis-u-s-cozies-kiev-government-including-far-right-n66061>); such reports are too numerous to cite in this complaint.

105. In other words, reasonable people (and news organizations) have reached a divergent set of views as to the widespread influence of neo-Nazis in Ukraine and CN should not have been defamed by NewsGuard as spreading "disinformation", "misinformation", "false content", failing to meet journalistic standards or being "anti-U.S." for expressing such viewpoint, as NewsGuard has done in its "Nutrition Label" and red flag warnings.⁸

106. Accordingly, the red flag, "Nutrition Label" and associated text annexed as **Exhibit A** published by NewsGuard stating that *Consortium News* publishes "false" facts

⁸ Further demonstrating the reasonableness of the statement in the CN article that neo-Nazis have "infested" Ukraine's government, leading Greek political figures, including two former prime ministers, decried Ukrainian President Zelensky bringing an Azov member to address the Greek parliament on April 7, 2022, calling it "a big mistake," "a provocation," "a day of historical shame," and that "Nazis cannot be allowed to speak in Parliament." See e.g. <https://www.euractiv.com/section/europe-s-east/news/zelenskyy-speech-at-greek-parliament-overshadowed-by-azov-video/>.

and misinformation, that CN fails to correct errors, that CN does not meet journalistic standards or that it fails to gather information responsibly, is defamatory; in addition, such conduct violated CN's First Amendment rights in that it is undertaken jointly or in concert with the United States, or is paid for or significantly encouraged by the U.S., to punish or discourage speech that is contrary to U.S. policy positions.

Defamation as to CN's Article As To The 2018 Bombing In Douma, Syria

107. In the Fishman email, NewsGuard also claimed that CN published "false content" or misleading information in a March 2022 article entitled "Caitlin Johnstone: International Law Becomes Meaningless When Applied Only to US Enemies"⁹ in which the writer Johnstone stated that

"The OPCW is now subject to the dictates of the U.S. government, as evidenced by **the organisation's coverup of a 2018 false flag incident in Syria** which resulted in airstrikes by the U.S., UK and France during Bolton's tenure as a senior Trump advisor."¹⁰

Exhibit C, Email of Zachary Fishman to info@consortiumnews.com, March 28, 2022 [bold type is in NewsGuard's original email].

108. NewsGuard stated that the CN article, particularly the text that NewsGuard placed in bold, is "false content" because there was no evidence that this was

"a 'false flag incident,' or that the OPCW was deliberately covering up such an incident, let alone that such a cover-up was dictated by the U.S. government."

See Email of Fishman to info@consortiumnews.com, March 28, 2022; **Exhibit C**, hereto.

⁹ See <https://consortiumnews.com/2022/03/17/caitlin-johnstone-international-law-becomes-meaningless-when-applied-only-to-us-enemies/> (last downloaded August 10, 2023); **Exhibit I**, hereto.

¹⁰ OPCW refers to the Organisation for the Prohibition of Chemical Weapons.

109. Here, again, NewsGuard defames CN as publishing “*false* content” (along with the other defamatory statements) yet other media organizations have also expressed the view that OPCW had been engaged in a “cover-up”, just as the re-published article on CN stated. In fact, *Consortium News* simply published a commentary reflecting an analysis shared by reputable writers and organizations concerning a “coverup” or “whitewash” by the U.S. and OCSW as to the basis for the Douma bombing.

110. For example, NewsGuard admits in the Fishman email that the CN article was “linked” to an article in *The Nation* whose headline said that OPCW had been ***covering up*** the true facts, **just as CN reported**. *The Nation* stated: “The American media is ignoring leaks from the Organization for the Prohibition of Chemical Weapons that suggest **a whitewash** [referring to the Douma bombing]”. <https://www.thenation.com/article/world/opcw-leaks-syria/> (downloaded last on August 7, 2023) [emphasis added].

111. As did CN, *The Nation* also stated that the U.S. had acted to “cover...up” the “false grounds” offered to support the bombing, referring to

“a series of leaked documents from [OPCW] raise the possibility that **the Trump administration bombed Syria on false grounds and pressured officials at the world’s top chemical weapons watchdog to cover it up.**”

“Two OPCW officials, highly regarded scientists with more than 25 years of combined experience at the organization, **challenged the whitewash from inside**. Yet unlike many whistle-blowers of the Trump era, they have found no champion, or even an audience, within establishment circles in the United States.” *Id.* [emphasis added].

See **Exhibit H**, Article, “Did Trump Bomb Syria on False Grounds?”, *The Nation*, July 24, 2020; <https://www.thenation.com/article/world/opcw-leaks-syria/> (downloaded last on August 7, 2023) [emphasis added].

112. In this same vein, *The Nation* reported that the alleged Syrian attack on Douma was staged, i.e., that deleted sections from OPCW’s final report indicated that a cylinder

allegedly containing chlorine was likely staged to make it look like it was fired from Syrian aircraft; based on that falsified “evidence,” *The Nation* reported the U.S. carried out air strikes against Syria.

113. While the exact term “false flag” is not found in *The Nation* article or in the leaked OPCW documents, the events as described by *The Nation* are indeed an attempt to plant evidence to falsely blame Syria — the exact definition of a “false flag” event, as *Consortium News* reported. Also described in *The Nation* report is U.S. pressure to delete this information from the final OPCW report, all of which can certainly be reasonably described as a “coverup”, as CN’s commentary stated.

114. Thus, *The Nation* employs the same language of “coverup” and “whitewash” as to OCSW and Douma as used by *Consortium News*, yet *The Nation* has not been defamed by NewsGuard.

115. As this analysis shows, NewsGuard defamed *Consortium News* by labelling its report of a “cover-up” by OPCW of the Douma bombing as a “false” fact or “false content” and a failure to adhere to journalistic standards when the matter arises out of a reasonable inference drawn from the known facts, a viewpoint shared by other reputable news organizations, including *The Nation* that reported (based on documents disclosed by Wikileaks and cited by other news groups) a “Whitewash” by OPCW of the falsified basis for the Douma bombing, *precisely what CN reported*. See generally **Exhibit H**, hereto.¹¹

¹¹ See also <https://wikileaks.org/opcw-douma/> (last downloaded August 22, 2023).

116. As noted earlier, even though *The Nation* was even more aggressive in describing the OPCW report as a “coverup” and “whitewash”, NewsGuard has not labelled, targeted or defamed *The Nation*.

117. Accordingly, the red flag, “Nutrition Label” and associated text annexed as **Exhibit A** published by NewsGuard stating that *Consortium News* publishes “false” facts and misinformation, that CN fails to correct errors, that does not meet journalistic standards or that it fails to gather information responsibly, is defamatory; in addition, such conduct violated CN’s First Amendment rights in that it is undertaken jointly or in concert with the United States, or is paid for or significantly encouraged by the U.S., to punish or discourage speech that is contrary to U.S. policy positions.

Additional Defamation after the Filing of the Original Complaint in this Matter

118. Just six days after CN filed its original complaint in this Court (ECF No. 3), and after a year of no further contact, Fishman *again* contacted *Consortium News* on August 17, 2023 and demanded a statement from CN as to whether “you stand by your article's claim about Russia and election interference?” *See* Email, Fishman to CN, August 17, 2023, **Exhibit M** hereto.

119. This latest demand was *again* made in connection with **a single sentence** from a long CN article analyzing U.S. relations with Ukraine and Russia over a 25-year period. *See* **Exhibit P**, CN Article, “Ukraine Timeline Tells the Story; <https://consortiumnews.com/2023/06/30/ukraine-timeline-tells-the-story/>.”

120. NewsGuard claimed the following sentence by CN’s columnist was false, namely that in 2016,

“The hoax known as Russiagate grips the Democratic Party and its allied media in the United States, in which it is falsely alleged that Russia interfered in the 2016 U.S. presidential election to get Donald Trump elected.”

See Fishman email, August 17, 2023, **Exhibit M** hereto.

121. NewsGuard cherry-picked this single sentence from a long and complex article of approximately 180 lines of type as a pretext for raising yet another claim of “false content” against CN, this time coming just days *after* CN filed its defamation complaint against NewsGuard.

122. NewsGuard demanded that CN explain if it continues to stand by such sentence when the “US Intelligence Community”, the Senate Intelligence Committee and Robert Mueller all concluded that Russia attempted to influence the 2016 election. See **Exhibit M**.

123. Having been earlier defamed by NewsGuard, CN declined to respond to Fishman’s latest demand and NewsGuard published an additional warning and “Nutrition Label” containing defamatory language similar to that used in connection with the earlier articles recited above. See Nutrition Label, **Exhibit N**, hereto.

124. Here again, NewsGuard defamed CN by claiming that it publishes “false” facts, “false content” and the like; see **Exhibit N**, whereas the single sentence in the CN article that Russiagate was a “hoax” is a statement of viewpoint consistent with the views of respected individuals and news organizations who have also disputed the argument that Russia “interfered to get Donald Trump elected”, the essence of the “Russiagate” claims.

125. For example, a New York University study released this year concludes that any Russian attempts at influence had no measurable impact on voter choice in the 2016 election. See Eady, G., Paskhalis, T., Zilinsky, J. *et al.* “Exposure to the Russian Internet Research Agency foreign influence campaign on Twitter in the 2016 US election and its

relationship to attitudes and voting behavior.” *Nat Commun* 14, 62 (2023); <https://doi.org/10.1038/s41467-022-35576-9>.

126. Moreover, Special Counsel Robert Mueller found no basis to suggest any collusion between the Trump campaign and Russia; in fact, no evidence has ever been documented that American voters were influenced by any information published by Russia or its agents.

127. As is now well-known, much of the “intelligence” on which the Russia influence claims are based came from the Steele dossier, created by Christopher Steele, a former MI6 officer, that has been largely discredited in that it is almost entirely uncorroborated *and was paid for by the Hillary Clinton campaign*; in fact, last year the Clinton campaign paid a \$113,000 fine to the Federal Election Commission because it concealed from the FEC that it used its own law firm to pay Fusion GPS to conduct the research that became the Steele dossier — the Clinton campaign falsely reported the money as “legal fees”. *See e.g.* Associated Press, “DNC, Clinton Campaign Agree to Settle Steele Dossier Funding Fine”, March 31, 2022; <https://apnews.com/article/russia-ukraine-2022-midterm-elections-business-elections-presidential-elections-5468774d18e8c46f81b55e9260b13e93> (last downloaded September 9, 2023).

128. Specifically, the Associated Press reported that the Steele dossier has been “discredited”, much of its “core” elements are uncorroborated rumor and a lawyer from the Clinton campaign lied about information contained in the dossier:

The Steele dossier was a report compiled by former British spy Christopher Steele and financed by Democrats that included salacious allegations about Trump’s conduct in Russia and allegations about ties between the Trump campaign and Russia.

Documents have shown the FBI invested significant resources attempting to corroborate the dossier and relied substantially on it to obtain surveillance warrants targeting former Trump campaign aide Carter Page.

But the dossier has been largely discredited since its publication, with core aspects of the material exposed as unsupported and unproven rumors. A special counsel assigned to investigate the origins of the Trump-Russia probe charged one of Steele's sources with lying to the FBI and charged a cybersecurity lawyer who worked for Clinton's campaign with lying to the FBI during a 2016 meeting in which he relayed concerns about the Russia-based Alfa Bank.

Trump, who has railed against the dossier for years, released a statement celebrating the agreement and once again slamming the dossier as "a Hoax funded by the DNC and the Clinton Campaign."

Associated Press, "DNC, Clinton Campaign Agree to Settle Steele Dossier Funding Fine", March 31, 2022, *supra*.

129. In 2019, the Inspector General of the Department of Justice found that much of the Steele dossier was unverified and cannot be corroborated, including one of its primary sources. *See e.g.* "Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation", Office of the Inspector General, Department of Justice, December 20, 2019 (last amended); www.justice.gov/storage/120919-examination.pdf [last downloaded September 15, 2023].

130. As early as 2017, *New York Times* analyst Scott Shane noted the absence from the Intelligence Community Assessment of any "hard evidence to back up the agencies' claims that the Russian government engineered the election attack." *See* <https://www.nytimes.com/2017/01/06/us/politics/russian-hacking-election-intelligence.html> (last downloaded September 10, 2023).

131. A study published in April 2023 entitled Russiagate Revisited: The Aftermath of a Hoax (2023), analyzes the allegations against Russia and concludes that many were

invented or exaggerated, were the product of the Clinton campaign's unverified opposition research and that there has never been evidence of any collusion between the Trump campaign and Russia. *See* Stephen Marmura, Oliver Boyd-Barrett, Russia Revisited: Aftermath of a Hoax (Palgrave MacMillan 2023). This work is from a well-known British publisher, edited by two reputable media academics and plainly offers reasoned support for the viewpoint of a "hoax", as expressed by CN's commentator.

132. Of equal importance, the report by the special counsel, John H. Durham, appointed by Attorney General Barr *after* the publication of the Mueller report, concluded that there were serious failings that led the FBI to precipitately open its investigation and that the FBI may have been affected by "political" and "confirmation bias" in opening the Crossfire Hurricane investigation:

[I]t seems highly likely that, at a minimum, confirmation bias played a significant role in the FBI's acceptance of extraordinarily serious allegations derived from uncorroborated information that had not been subjected to the typical exacting analysis employed by the FBI and other members of the Intelligence Community. In short, it is the Office's assessment that the FBI discounted or willfully ignored material information that did not support the narrative of a collusive relationship between Trump and Russia. Similarly, the FBI Inspection Division Report says that the investigators "repeatedly ignore[d] or explain[ed] away evidence contrary to the theory the Trump campaign ... had conspired with Russia.... It appeared that ... there was a pattern of assuming nefarious intent." 1749 An objective and honest assessment of these strands of information should have caused the FBI to question not only the predication for Crossfire Hurricane, but also to reflect on whether the FBI was being manipulated for political or other purposes. Unfortunately, it did not.

<https://www.justice.gov/storage/durhamreport.pdf> (last downloaded September 12, 2023)

133. Durham also concluded that the FBI demonstrated such bias by its "inexplicable failure to consider and incorporate" into its investigation evidence that the Clinton campaign

was engaging in a attempt to falsely link the Trump campaign to Russia and involve the FBI in such efforts. Durham stated:

The aforementioned facts reflect a rather startling and inexplicable failure to adequately consider and incorporate the Clinton Plan intelligence into the FBI's investigative decision making in the Crossfire Hurricane investigation. Indeed, had the FBI opened the Crossfire Hurricane investigation as an assessment and, in turn, gathered and analyzed data in concert with the information from the Clinton Plan intelligence, it is likely that the information received would have been examined, at a minimum, with a more critical eye. A more deliberative examination would have increased the likelihood of alternative analytical hypotheses and reduced the risk of reputational damage both to the targets of the investigation as well as, ultimately, to the FBI.

The FBI thus failed to act on what should have been -when combined with other, incontrovertible facts - a clear warning sign that the FBI might then be the target of an effort to manipulate or influence the law enforcement process for political purposes during the 2016 presidential election.

Id. at 97-99.

134. The above samples, taken from the vast array of discussion and evidence in the public record, demonstrates that the single sentence cherry-picked by NewsGuard from CN's June 2023 article that "Russiagate" was a "hoax", is a statement derived from known facts and shared by others in the public realm and CN should not have been defamed by NewsGuard as publishing "false content" and failing to meet journalistic standards, along with the other defamatory material on the warning label. **Exhibit N**, hereto.

135. Accordingly, the red flag, "Nutrition Label" and associated text annexed as **Exhibit A** published by NewsGuard stating that *Consortium News* publishes "false" facts and misinformation, that CN fails to correct errors, that CN does not meet journalistic standards or that it fails to gather information responsibly, is defamatory; in addition, such conduct violated CN's First Amendment rights in that it is undertaken jointly or in concert

with the United States, or is paid for or significantly encouraged by the U.S., to punish or discourage speech that is contrary to U.S. policy positions.

COUNT I

(First Amendment Violation by the United States and NewsGuard Acting Jointly and/or In Concert)

136. Plaintiff repeats and re-alleges each and every allegation set forth above as if more fully set forth below.

137. During all periods when NewsGuard contacted *Consortium News* as to articles concerning Russia and Ukraine, NewsGuard was acting under a contract with the Department of Defense to identify organizations allegedly promoting Russian “myths” or disseminating Russian “misinformation” concerning Russia or the war in Ukraine.

138. NewsGuard was awarded the “Misinformation Fingerprints” contract in the amount of \$749,387 by the Department of Defense (DOD) with a start date of 9/7/21 and an end date of 12/08/22; see Small Business Administration Grant (SBIR), **Exhibit J** annexed hereto.

139. As the attached SBIR digest shows, the contract with DOD covered the period of NewsGuard’s first communication with *Consortium News* on March 25, 2022 and continued at least through the date of NewsGuard’s initial publication of the “false content” warning and red flag labels on or about August 11, 2022; see SBIR registry, **Exhibit J** hereto.

140. NewsGuard’s contract with the United States is continuing as indicated by NewsGuard’s co-CEO Gordon Crovitz’s statement set forth below.

141. On March 10, 2023, Gordon Crovitz stated publicly in an email to journalist Matthew Taibbi, a copy of which Crovitz released to the *Press-Gazette*, a UK-based news

media industry journal, that NewsGuard’s work for the DOD consists of the “identification and analysis” of internet sites and others spreading Russian “disinformation”:

As is public, our work for the Pentagon’s Cyber Command is focused on the identification and analysis of information operations targeting the US and its allies conducted by hostile governments, including Russia and China.

Our analysts alert officials in the US and in other democracies, including Ukraine, about new false narratives targeting America and its allies, and we provide an understanding of how this disinformation spreads online. We are proud of our work countering Russian and Chinese disinformation on behalf of Western democracies.

See Email of Gordon Crovitz, March 10, 2023 to Matthew Taibbi, annexed as Exhibit K, annexed hereto; *see also* Press-Gazette, March 10, 2023; <https://pressgazette.co.uk/news/matt-gaetz-newsguard-taibbi/> (last downloaded August 27, 2023).

142. By this admission, Crovitz acknowledged that NewsGuard is paid by the government to identify news organizations that publish or disseminate “disinformation” concerning Ukraine and Russia, in other words information that dissents from, or challenges, U.S. policy in this area.

143. NewsGuard’s contract with the U.S. is described as “Misinformation Fingerprints”; see SBIR registry, **Exhibit J** hereto.

144. In turn, the “Misinformation Fingerprints” project is described by NewsGuard as concerning Russian “propaganda” and “myths” spread by websites and news organizations, as to three primary areas described in blue bold below:

Misinformation Fingerprints™: How Russia’s Propaganda Outlets Created Falsehoods as a Pretext for War

As the situation in Ukraine began to escalate, Russia’s propaganda outlets focused increasingly on false narratives that created pretexts or justifications for war. NewsGuard has catalogued these narratives as **Misinformation Fingerprints™** for use by defense analysts, including at teams at the Pentagon and the State Department’s

Global Engagement Center, as well as by reputation risk management partners. The Misinformation Fingerprints™ include more than 600 machine-readable false narratives, providing seeds enabling artificial intelligence tools to trace the provenance of myths and disclose how they are shared.

Here, we've attached a sampling of three key narratives leading Russia's Ukraine propaganda effort:

- [Myth: The West staged a coup to overthrow the Ukrainian government](#)
- [Myth: Ukrainian politics and society is dominated by Nazi ideology](#)
- [Myth: Ethnic Russians in Donbas have been subjected to genocide](#)

As the conflict continues to unfold, we will track new narratives and share more reporting about how Russia's propaganda machine operates to advance the Kremlin's interests.

See **Exhibit Q** hereto; source: <https://www.newsguardtech.com/special-reports/newsguard-details-the-kremlins-ukraine-disinformation-tools/> (last downloaded August 27, 2023)[links in blue highlight in NewsGuard's original].

145. NewsGuard's labelling of *Consortium News* articles as to Ukraine is a part and parcel of this "Misinformation Fingerprints" program, as shown by NewsGuard's claims that *Consortium News* published disinformation or "false content" as to the following three areas:

- 1) CN's article concerning the viewpoint that the U.S. "organized" the 2014 "coup" in Ukraine;
- 2) CN's article discussing presence of fascists and neo-Nazis in Ukraine's government and military; and
- 3) CN's article discussing the "genocide" committed against Russians in Donbas by Ukrainian fascist militias.

146. These three subject areas — the "coup", the presence of "neo-Nazis" in Ukraine and "genocide" against Russians — are identical to the three "myths" that are the subject of

the “Misinformation Fingerprints” program that NewsGuard contracted to provide to the United States. *See* ¶144, *supra*.

147. Accordingly, the United States has significantly encouraged and facilitated the publication of warnings and advisories against *Consortium News* and other news providers in the field of Russian and Ukrainian affairs under a contract with NewsGuard, particularly as to the three designated “myths” that are the subject of the Misinformation Fingerprints program: 1) the “coup”; 2) the presence of “neo-Nazis” in Ukraine; and 3) the “genocide” by Ukrainian fascists against Russians in Donbas.

148. In the alternative, such conduct gives rise to a close nexus between the United States and NewsGuard and because of such nexus, the publication by NewsGuard of the warnings and red flags in connection with *Consortium News*’s articles as to Russia and Ukraine can be fairly attributed to governmental acts of the United States.

149. NewsGuard has, therefore, acted jointly, intentionally or in concert with the United States to identify and publish the foregoing warnings and other statements as to *Consortium News* (and other news organizations).

150. In the course of the government contract, NewsGuard and the United States have acted to retaliate against those news entities and media organizations that refuse to retract or correct their articles; such retaliation consists of the “false content” warnings, the red flag and associated content described in this Amended Complaint that has been published by NewsGuard as to *Consortium News* and other non-conforming news and media organizations.

151. By these practices, NewsGuard and the United States in violation of the First Amendment are carrying out a governmental program under the “Misinformation Fingerprints” contract to publicly label, target and stigmatize news organizations as disfavored, unreliable, as journalistically not responsible, as not “trustworthy”, as purveying false content, as being Russian propagandists and being “anti-U.S.”, where said organizations differ or dissent from U.S. policy in connection with Russia or Ukraine,.

152. Defendants United States and NewsGuard’s conduct has the common objective, or the effect of, discouraging, eliminating and/or discrediting private news and media organizations that differ or dissent from U.S. policy towards Russia and Ukraine; defendants have acted in this manner to maintain and foster viewpoints favorable to U.S. policies as to Russian and Ukrainian matters.

153. In doing so, defendants have acted to declare what is orthodox or acceptable concerning Russia or Ukraine.

154. In so doing, defendants have acted to force self-censorship by private news organizations in order to avoid NewsGuard’s negative and adverse labelling or to retaliate against news organizations that refuse to change or retract such views.

155. By the effect of the negative warning flag and associated labelling, NewsGuard and the U.S. are acting affirmatively to coerce speech favorable to the U.S., to coerce the withdrawal or abandonment of speech that differs from or dissents from U.S. policies and to punish those speakers who do not agree to conform their speech to U.S. policies.

156. The above acts and conduct interfere with and injure the First Amendment rights of *Consortium News*, its writers and its guest commentators and other targeted news organizations.

157. Such conduct violates the speech and press guarantees of the First Amendment.

WHEREFORE, declaratory judgment and injunctive relief is demanded that

- 1) defendants have acted in violation of the First Amendment by their publication or facilitating the publication of statements that news organizations are unreliable, irresponsible, publish Russian propaganda, publish “false content”, are “anti-U.S.” and the like, as described in this Complaint;
- 2) the “Misinformation Fingerprints” program violates the First Amendment by describing and labelling private news organizations as unreliable, irresponsible and sources of false content and propaganda;
- 3) defendants are acting in violation of the First Amendment by seeking to coerce and force private news organizations to alter and remove viewpoints critical of the government’s policies or that are contrary to the government’s policies;
- 4) defendants have violated plaintiff’s due process rights and those of other providers by seeking to force or coerce news organizations into abandoning their rights under the First Amendment to publish news and views contrary to that of the government and by retaliating against those who refuse to retract or withdraw such publications;
- 5) defendants be permanently enjoined from publishing, releasing or causing to be released any reports, articles or other statements relating to information, findings or conclusions that arise from the Misinformation Fingerprints program;
- 6) that the Misinformation Fingerprints program be declared unconstitutional and be permanently enjoined;
- 7) that defendants cease all labelling of *Consortium News* articles and videos;
- 8) that defendants shall pay unliquidated monetary compensatory and punitive or special damages to plaintiff in consequence of the defendants’ violation of plaintiff’s First and Fifth Amendment rights as *Bivens*-type or constitutional torts, along with costs, interests, reasonable attorneys fees; and

9) such other relief as to the Court shall be deemed just and proper.

COUNT II
(Common Law Defamation, Libel and Slander)

158. Plaintiff repeats and re-alleges each and every allegation set forth above as if more fully set forth below.

159. As set forth above, NewsGuard has defamed, libeled and/or slandered *Consortium News*.

**NEWSGUARD’S DEFAMATORY STATEMENTS WERE ARBITRARY, MALICIOUS,
WANTON AND/OR IN RECKLESS DISREGARD OF THE TRUTH**

**NewsGuard Intentionally Published False Statements that CN Does Not Regularly Correct
Errors**

160. NewsGuard knowingly and intentionally published false statements that CN did not regularly correct errors or omissions.

161. This deliberate falsity arose in connection with NewsGuard’s having given a red “X” in its “Nutrition” label next to the journalistic standard marked “Regularly corrects or clarifies errors.” *See* document appended to **Exhibit A**. By giving the red “X” at such reference point, NewsGuard is stating to its subscribers that *Consortium News* does NOT meet the journalistic standard that it “regularly corrects or clarifies errors.”

162. This statement is false and is contrary to NewsGuard’s own knowledge at the time as shown by Fishman’s admission in his May 10, 2022 email to Joe Lauria that *Consortium News* has a “**regular pattern of issuing corrections**.” Email Fishman to info@consortiumnews.com, May 10, 2022; document appended to **Exhibit C** [emphasis added].

163. Specifically, Fishman stated to Lauria:

I have found additional corrected articles from the past year since I first asked you for additional examples, **and they pretty clearly demonstrate to me a regular pattern of issuing corrections.**

Email Fishman to info@consortiumnews.com, at §3, May 10, 2022, **Exhibit C** [emphasis added].

164. As such, NewsGuard’s red “X” indicating to subscribers that CN does not regularly correct or clarify errors was not only false but was contrary to NewsGuard’s own admission and acknowledgment that CN has “a regular pattern of issuing corrections.” *Id.*

165. Accordingly, NewsGuard’s labelling in this manner was intentional, arbitrary, wanton, performed with malice and/or with reckless disregard for the truth.

NewsGuard Intentionally Defamed, Libeled or Slandered Consortium News

166. NewsGuard acted with the pre-formed intent to publish defamatory statements that CN published “false content”.

167. This was evident from NewsGuard’s first contact with CN in which Fishman stated that he was inquiring about CN’s “publication **of false content.**” **Exhibit G**, Email Zachary Fishman to info@consortiumnews.com, March 25, 2022 [emphasis added].

168. NewsGuard thus acted with the premeditated intent and purpose of defaming, libeling or slandering CN as a purveyor of “false content” even before it had requested and considered CN’s response to NewsGuard’s March 25 and 28 emails.

NewsGuard Recklessly Labels All Consortium News Articles and Production as False and Failing Journalistic Standards

169. NewsGuard has labelled ***each and every CN article or video***, the 20,000-plus archive published since 1995, with the red warning label and statement that CN publishes

“false” information, fails to correct errors, fails to meet journalistic standards, is “anti-U.S.”, along with other defamatory material.

170. Such statements are appended to each and every CN article or production that appears on any NewsGuard subscriber search, even though NewsGuard has only reviewed a small number of articles, such as the five (5) articles identified in NewsGuard’s email from Zachary Fishman of March 28, 2022 and the June 2023 article described by Fishman in his August 17, 2023 email.

171. NewsGuard has identified no other CN articles in which it claims CN published “false” information or failed to meet journalistic standards.

172. In reality, NewsGuard has reviewed less than one-tenth of one percent (1%), a tiny fraction, of CN’s 28-year old archive, yet NewsGuard has tagged *all* of CN’s 20,000-plus articles or other works with its defamatory red flag warning and label and associated text.

173. NewsGuard has engaged such defamation *even though it has identified a total of only six (6) articles as to which it makes any complaint.*

174. Such conduct is a part of NewsGuard’s business model in which it labels and targets *the entirety of a news organization’s production* even though NewsGuard has read only a tiny fraction of such materials and has asserted no claim of falsity or other deficit against such other materials.

175. Such practices demonstrate that NewsGuard’s intention is to punish a news organization that does not retract its views by defaming the entirety of a news organization’s output and its reputation for honesty and integrity *even though NewsGuard makes no*

claim to reading or reviewing the remainder of the organization's production and expresses no complaint with such other materials.

176. Since NewsGuard has not read or reviewed more than a small fraction of *Consortium News's* production (less than 1/10th of one percent), it has failed to check the accuracy of its claims that CN “*generally*” produces “false content”, fails to correct errors, is “anti-U.S.” and fails to meet minimum journalistic standards.

177. Similarly, NewsGuard has never asserted that it has downloaded or accessed any *CN Live!* segments and it has, therefore, failed to check the accuracy of its labelling of all of *CN Live!* productions as the product of “false content”, misinformation, a failure to correct errors and a breach of journalistic standards.

178. By placing the red flag warning (or the blue warning in later instances) to works that NewsGuard has not read, NewsGuard has acted to defame, libel and slander CN's entire production and its writers, arbitrarily, wantonly, recklessly, with malice and without regard to the truth and/or reckless disregard for the truth.

NewsGuard's Labelling of *Consortium News* as “Anti-US”

179. NewsGuard has labelled *Consortium News* as “anti-U.S.”, a statement that maligns the loyalty and patriotism of CN's staff, editors, board members and writers, most of whom are American citizens, loyal to their country and proud of its traditions of free speech and a free press.

180. To criticize American policy does not render a writer or a news organization “anti-U.S.” but is the highest form of citizenship and is a normal and ordinary part of the journalist's profession.

181. By labelling *Consortium News* in this manner, NewsGuard has committed additional libel, defamation and/or slander.

182. NewsGuard has failed to identify any act by CN that is “anti-U.S.” and NewsGuard’s conduct stating that *Consortium News* is “anti-U.S.” is intentional, knowing, arbitrary, wanton, malicious and/or a reckless disregard of the truth.

NewsGuard’s Concealment that it was Acting as an Agent of the U.S. and the Defense Department

183. At all times in its communications with *Consortium News*, NewsGuard concealed its contract with the U.S. Cyber Command; such contract is discussed in **Count I**, *supra*, and is adopted into this **Count II**.

184. NewsGuard failed to disclose to plaintiff that it was acting pursuant to a contract with the government to seek out and identify news organizations that disseminate Russian “disinformation” and Russian “myths” about the Ukraine war.

185. At the time Fishman was claiming that he and NewsGuard were acting as journalists, NewsGuard was contractually obligated to provide intelligence about American or foreign news organizations to the Defense Department, yet in its communications with *Consortium News*, NewsGuard concealed that it was being paid by the United States to extract information from CN (and other news organizations) as to CN’s Russia and Ukraine articles.

186. By such omissions, NewsGuard fraudulently induced CN to contribute to NewsGuard’s analysis and induced CN to offer explanations for its journalism that were

delivered to U.S. intelligence authorities, conduct in which CN would not have joined had it been informed of NewsGuard's contractual relationship with the Cyber Command.

187. Upon information and belief, NewsGuard concealed its contract with the United States in its communications with all other targeted news organizations.

188. By such concealment, NewsGuard further demonstrated intent, malice, recklessness and arbitrariness in its publication of the statements concurring *Consortium News*.

DEFAMATION, LIBEL AND/OR SLANDER *PER SE*

189. A news organization and its journalists live only on their reputation and the actions of NewsGuard have the inevitable effect of damaging and injuring CN's reputation in the news industry.

190. As set forth in this complaint, the actions of NewsGuard 1) directly, deliberately and falsely reflect on Plaintiff's performance as a news organization, 2) injure plaintiff in its trade, business or profession of providing news and journalistic works and 3) are statements that CN's actions are ethically incompatible with the proper conduct of plaintiff's business as a news organization.

191. As such, defendant is liable to plaintiff for defamation, libel and/or slander *per se* for having defamed plaintiff in its reputation for competence in its business or profession.

192. Defendant is without any privilege or authorization to engage in said defamatory acts.

193. As set forth earlier, such acts by NewsGuard were intentional, knowing, deliberate, wanton, arbitrary and with actual malice and reckless disregard of the truth.

WHEREFORE plaintiff demands judgment against defendant for damages for defamation on **Count II** in defamation in the minimum amount of \$75,000, as follows:

1. Monetary damages consisting of nominal damages and/or unspecified compensatory damages;
2. Punitive or exemplary damages in a minimum amount of Thirteen Million, Six Hundred Thousand Dollars (\$13,600,000);
3. Injunctive relief barring NewsGuard from continuing said practices as to *Consortium News*;
4. Interest, costs, reasonable attorneys fees and such other relief as to the Court may seem just and proper.

Respectfully submitted,

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Dated: October 12, 2023