

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NORTH JERSEY MEDIA GROUP INC.,

Plaintiff,

v.

FOX NEWS NETWORK, LLC,

Defendant.

Index No.: 14-CV-07630(ER)

**DEFENDANT-COUNTERCLAIMANT
FOX NEWS NETWORK, LLC'S
ANSWER TO THE COMPLAINT
AND COUNTERCLAIMS**

Defendant Fox News Network, LLC ("Defendant" or "FNN"), by and through its counsel, Hogan Lovells US LLP, as and for an Answer to the specific allegations in the separately numbered paragraphs of the Complaint and Jury Demand ("Complaint") of plaintiff North Jersey Media Group Inc. ("Plaintiff" or "NJMG") and as and for its Counterclaims against Plaintiff, states as follows:

**RESPONSE TO
NATURE OF THE ACTION¹**

1. FNN denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and on that basis, denies those allegations.

**RESPONSE TO
JURISDICTION AND VENUE**

2. FNN denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and on that basis, denies those allegations.

3. With Plaintiff having filed a notice of voluntarily dismissal as to the Doe Defendants [Dkt. No. 18], and with that notice having been so-ordered by the Court on June 1,

¹ FNN specifically denies any liability which might arise from the words contained in the headings in the Complaint or in any defined terms contained in the Complaint.

2015 [Dkt. No. 19], FNN admits the allegations contained in Paragraph 3 of the Complaint.

4. FNN admits the allegations contained in Paragraph 4 of the Complaint.

**RESPONSE TO
PARTIES**

5. FNN admits, upon information and belief, that Plaintiff is a New Jersey corporation with its principal place of business in Woodland Park, New Jersey, and that Plaintiff publishes *The Record* (Bergen County, NJ), and, except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 5 of the Complaint, and on that basis, denies those allegations.

6. In response to the allegations in Paragraph 6 of the Complaint, FNN need not respond to Plaintiff's allegations as against John Does No. 1-5, as Plaintiff has voluntarily dismissed its case as against those defendants. FNN admits that it is a Delaware limited liability company with its principal place of business in the State of New York.

**RESPONSE TO
NJMG'S COPYRIGHT**

7. FNN denies each and every allegation contained in Paragraph 7 of the Complaint.

**RESPONSE TO
DEFENDANTS' INFRINGING ACTS**

8. FNN admits that, on or around September 10, 2014, an FNN employee posted an altered version of the WTC Flag Raising Photograph to a Facebook page located at www.facebook.com/BretBaierSR, and, except as so admitted, denies each and every remaining allegation contained in Paragraph 8 of the Complaint.

9. FNN admits that, on September 15, 2014, Dori Ann Hanswirth, Esq. and Nathaniel S. Boyer, Esq., counsel for FNN herein, received an e-mail from William Dunnegan, Esq., counsel for NJMG. FNN respectfully refers the Court to that e-mail for its true content and

meaning. Except as so admitted, FNN denies each and every remaining allegation contained in Paragraph 9 of the Complaint.

10. FNN admits that, as of September 19, 2014, it had not removed the altered version of the WTC Flag Raising Photograph from the Facebook page located at www.facebook.com/BretBaierSR. FNN never posted a copy of the WTC Flag Raising Photograph to the Facebook page located at www.facebook.com/BretBaierSR and, on that basis, denies the allegation in Paragraph 10 of the Complaint.

11. In response to the allegations contained in Paragraph 11 of the Complaint, FNN admits that, on October 9, 2013, NJMG filed a complaint in this Court against Jeanine Pirro, alleging that she had infringed NJMG's alleged copyright in its WTC Flag Raising Photograph, and that that action is captioned *North Jersey Media Group Inc. v. Pirro et al.*, 13-cv-7153(ER). FNN further admits that, on February 20, 2014, NJMG filed an amended complaint in that action, naming FNN as a defendant. FNN denies knowledge or information sufficient to form a belief as to the truth of the factual allegation, contained in Paragraph 11 of the Complaint, that NJMG, in amending its complaint, was "acting on information [FNN] provided," and on that basis, denies that allegation. FNN denies that it has made any unauthorized use of the WTC Flag Raising Photograph and thus denies each and every remaining allegation contained in Paragraph 11 of the Complaint.

**RESPONSE TO
CLAIM FOR RELIEF
(Copyright Infringement – 17 U.S.C. § 501)**

12. In response to the allegations contained in Paragraph 12 of the Complaint, FNN repeats and realleges each and every admission, referral, and denial set forth in response to Paragraphs 1 through 11 of the Complaint as if more fully set forth herein.

13. FNN admits that Plaintiff applied for and received a copyright registration from

the United States Copyright Office, and, except as so admitted, denies each and every remaining allegation contained in Paragraph 13 of the Complaint, including Plaintiff's allegation that it owns the copyright in the WTC Flag Raising Photograph.

14. FNN denies each and every allegation contained in Paragraph 14 of the Complaint.

15. FNN denies each and every allegation contained in Paragraph 15 of the Complaint.

16. FNN denies each and every allegation contained in Paragraph 16 of the Complaint.

17. FNN denies each and every allegation contained in Paragraph 17 of the Complaint.

18. FNN denies each and every allegation contained in Paragraph 18 of the Complaint.

AFFIRMATIVE DEFENSES

FNN pleads the following separate and distinct affirmative defenses without conceding that it bears the burden of proof as to any of these issues. FNN reserves the right to assert additional affirmative defenses that discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is barred by the doctrine of fair use.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim is barred because the use in question was incidental and/or *de minimis*.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim, or recovery thereon, is barred, in whole or in part, by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is equitably estopped from bringing the claim set forth in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim, or recovery thereon, is barred, in whole or in part, by its unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim, or recovery thereon, is barred, in whole or in part, because and/or to the extent that it failed to mitigate its alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred on the ground that FNN's actions and speech are protected by the First Amendment of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

To the extent Plaintiff lacks a valid interest in the work at issue in the Complaint that has been duly registered with the United States Copyright Office, this Court lacks subject matter jurisdiction over Plaintiff's claim for copyright infringement.

TENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff lacks a valid interest in the work at issue in the Complaint that has been duly registered with the United States Copyright Office, Plaintiff lacks standing to assert a claim for copyright infringement.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is entitled to no relief because it lacks any ownership interest in the work that was allegedly copied.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred because FNN had a license to use the work at issue in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claim, or recovery thereon, is barred, in whole or in part, on the ground that Plaintiff's request for relief is not in the public interest.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff is entitled to no relief because it has suffered no damages as a result of the matter at issue in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff is entitled to no relief because FNN has gained no revenue or profits as a result of the matter at issue in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

If there is a finding of infringement in this action, Plaintiff's damages, if any, are limited because FNN has not committed willful infringement.

SEVENTEENTH AFFIRMATIVE DEFENSE

If there is a finding of infringement in this action, Plaintiff's damages, if any, are limited by FNN's innocent infringement.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's demand for a preliminary injunction is moot.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to an injunction because Plaintiff has not suffered, and will not suffer, irreparable harm.

TWENTIETH AFFIRMATIVE DEFENSE

FNN reserves the right to assert and rely upon other defenses that become available or

appear during the course of this action.

WHEREFORE, defendant Fox News Network, LLC prays that this Court dismiss and strike the Complaint and Jury Demand filed herein, award judgment to defendant Fox News Network, LLC and award to said defendant its costs of suit, including attorneys' fees pursuant to 17 U.S.C. § 505 or any other applicable law or rule, and grant such other relief as the Court deems just and appropriate.

DEFENDANT'S COUNTERCLAIMS AGAINST PLAINTIFF

Defendant and Counterclaimant Fox News Network, LLC ("FNN"), by its undersigned attorneys, as and for its Counterclaims against Plaintiff and Counterclaim-Defendant North Jersey Media Group Inc. ("NJMG"), alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. FNN is a Delaware limited liability company with its principal place of business in New York, New York. FNN, *inter alia*, owns and cablecasts the Fox News Channel, a national 24/7 cable television news channel and the most highly rated cable television news channel in the United States for the last 15 years. FNN also owns and cablecasts the Fox Business Network, a 24/7 national cable television news channel focusing on business and economics. FNN also owns and operates websites associated with the Fox News Channel and the Fox Business Network, located respectively at www.foxnews.com and www.foxbusiness.com; these websites feature news articles, videos, and other content.

2. FNN is, and at all times relevant herein was, engaged in the business of, among other things, creating, producing, developing, distributing, and publishing television programs and audiovisual content. Among the copyrighted content distributed by FNN is such widely-viewed programs as *Special Report with Bret Baier* and *Fox News Sunday*.

3. Upon information and belief, NJMG is a New Jersey corporation with its principal place of business in Woodland Park, New Jersey. NJMG describes itself as “the leading provider of news and marketing services in northern New Jersey.” In addition to publishing *The Record* (Bergen County, NJ), NJMG owns and operates the website located at the uniform resource locator (“URL”) <http://www.northjersey.com> (“NorthJersey.com”), which it bills as “the number one website for local breaking news, receiving approximately 14 million monthly page views.” Upon information and belief, NJMG uses the NorthJersey.com website to provide news and marketing services.

4. Upon information and belief, through NorthJersey.com, NJMG publishes digital copies of articles that also appear in NJMG print publications, such as *The Record*. Upon information and belief, NJMG also publishes stand-alone digital articles and blogs by its journalists on NorthJersey.com. Upon information and belief, NorthJersey.com also features a subdomain, <http://video.northjersey.com>, which is a video gallery in which NJMG displays various videos.

5. This Court has original subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over NJMG because (i) it has voluntarily availed itself of the federal courts in this state by instituting the underlying action, (ii) it is registered to do business in the State of New York, (iii) it regularly conducts business in the State of New York, and/or (iv) the conduct described in this Complaint was targeted at FNN, a New York-based company.

7. Venue for this action is proper in this Court pursuant to 28 U.S.C. § 1400(a) because NJMG can be found in this district, as NJMG is subject to personal jurisdiction in the State of New York. Venue for this action is also proper in this Court pursuant to 28 U.S.C. §

1391(b) because a substantial part of the events giving rise to these claims occurred in this District.

THE FNN INTELLECTUAL PROPERTY RELEVANT TO THIS DISPUTE

8. FNN's affiliate company, Twentieth Century Fox Film Corporation, is the owner of numerous famous and distinctive marks featuring the "Fox" brand name, several of which it licenses to FNN. These marks include FOX NEWS (U.S. Reg. Nos. 2697436, 2697433), FOX NEWS SUNDAY (U.S. Reg. No. 2083588), and FOX BUSINESS (U.S. Reg. No. 3627558). These famous and distinctive marks are prominently affiliated with FNN and its primary product, the Fox News Channel and/or the Fox Business Network. FNN is also the owner of several other distinctive marks that it uses in connection with the Fox News Channel, including SPECIAL REPORT WITH BRET BAIER and FNC. FNN has invested hundreds of millions of dollars in developing, marketing, and advertising its products such that they are immediately identified with FNN and its marks.

9. *Special Report with Bret Baier* is a news and political commentary program that airs live on weekdays from 6:00 – 7:00 p.m. ET on the Fox News Channel. It is the primary evening news program on the Fox News Channel. During its time slot, it is the number one news program on cable television. It has aired continuously on the Fox News Channel since 2009. *Special Report with Bret Baier* provides in-depth analysis of news and political issues.

10. *Special Report with Bret Baier* is presently anchored by Washington news veteran Bret Baier. Baier has been an on-air news reporter and anchor for FNN since 1998 and has hosted the highly-rated *Special Report with Bret Baier* program since January 2009. Baier is closely associated with FNN's products, including the Fox News Channel, in the eyes of persons who consume news. FNN is also the exclusive owner of Baier's endorsement and publicity rights.

11. *Fox News Sunday* is the Fox News Channel's signature Sunday news and commentary program that airs on local Fox television stations across the United States and on Sunday afternoon on the Fox News Channel. *Fox News Sunday* features in-depth interviews and panel discussions concerning the week's biggest policy and political developments.

12. *Fox News Sunday* is anchored by Chris Wallace, a well-known television journalist with a long-standing track record of asking difficult questions of persons in power. Prior to joining FNN in 2003, Wallace was a senior correspondent with ABC News, and before that, Chief White House Correspondent for NBC News. Wallace is closely associated with FNN's products, including the Fox News Channel, in the eyes of persons who consume news. FNN is the exclusive owner of Wallace's endorsement and publicity rights.

13. On September 19, 2014, FNN cablecast a live panel discussion entitled "Winners and Losers" on its *Special Report with Bret Baier* program (the "Special Report Segment"). FNN is the sole owner of the copyrights in the Special Report Segment, which were duly registered by the United States Copyright Office. The Special Report Segment is approximately one minute and fifty-three seconds in length. The Special Report Segment briefly covers a handful of newsworthy topics, starting with a report about a skunk in Ohio; the vote for Scottish independence; Greg Orman's independent run for the U.S. Senate in Kansas; the fact that immigration activists confronted Hillary Clinton; Joe Biden's apology for the use of the term "Shylocks" to describe allegedly unscrupulous money lenders; and France's then-recent engagement in the fight against ISIS. The Special Report Segment concludes with a statement by Bret Baier suggesting that MSNBC (a rival cable television news network) might not adequately cover news of Chris Christie's then-recent exoneration in the so-called "Bridgegate" scandal.

14. The Special Report Segment prominently displays several marks which FNN owns or has the right to use, including FOX NEWS, SPECIAL REPORT, and FNC. The Special Report Segment also prominently features well-known FNN personality Bret Baier.

15. On October 26, 2014, FNN cablecast an original interview of New Jersey Governor Chris Christie on *Fox News Sunday*, conducted by Chris Wallace (the “Christie-Wallace Interview”). FNN is the sole owner of the copyrights in the Christie-Wallace Interview, which were duly registered with the United States Copyright Office. The Christie-Wallace Interview is approximately 17 minutes. It concerns Governor Christie’s decision to quarantine health workers who had returned from the Ebola-ravaged areas of West Africa.

16. The Christie-Wallace Interview prominently displays at least two marks which FNN owns or has the right to use, including FOX NEWS SUNDAY and FNC. The Christie-Wallace Interview also prominently features well-known FNN personality Chris Wallace.

17. On November 5, 2014, FNN cablecast a public address by President Barack Obama (the “POTUS Speech Coverage”), which featured, at the bottom of the screen – known as the “lower third” – original content that was created by FNN. The POTUS Speech Coverage contains synopses of the President’s speech and summaries of other news stories in the lower third of the video. FNN is the sole owner of the copyrights in the lower third of the POTUS Speech Coverage, which were duly registered with the United States Copyright Office. The POTUS Speech Coverage is approximately four minutes.

18. The POTUS Speech Coverage prominently displays several marks which FNN owns or has the right to use, including FOX NEWS, FOX BUSINESS, and FNC.

NJMG'S INFRINGING ACTS – THE SPECIAL REPORT SEGMENT

19. NJMG's Complaint concerns an alleged act of copyright infringement arising from the posting of a photograph to a Facebook Page associated with Bret Baier. The Complaint was filed on or around September 19, 2014.

20. After filing this Complaint, on or around October 14, 2014, NJMG displayed the entirety of the Special Report Segment – one minute and fifty-three seconds in duration – on its website, at the URL <http://video.northjersey.com/Baier-Will-MSNBC-cover-Christie-exoneration-26889890?playlistId=13994>. NJMG displayed the Special Report Segment above a large caption reading, "Baier: Will MSNBC cover Christie exoneration?" A screenshot depicting this display of the Special Report Segment is annexed hereto as **Exhibit A**. NJMG displayed the Special Report Segment without authorization from FNN.

21. As can be seen in Exhibit A, at the top of the page on which the Special Report Segment was displayed, there is a banner that reads "NorthJersey.com Studio." A panel on the right-hand side of the page features thumbnails that are said to link users to "Top Trending Videos." Below the Special Report Segment are thumbnails that appear to link to other videos, sorted by categories, including "NorthJersey.com," "Editors' Picks," "NJ News," and "Must See."

22. Upon information and belief, whenever a user attempted to watch the Special Report Segment on NorthJersey.com, NJMG displayed a video advertisement for a third-party company, typically lasting approximately 30 seconds.

23. In the course of investigating this matter, FNN learned that the Special Report Segment had been hosted without FNN's permission by an entity called News Distribution Network, Inc. ("NDN"), and displayed on an embedded video player located on NJMG's website. Upon information and belief, NDN is a "video automation platform [that] enables

publishers to optimize viewer engagement and online revenue with ease.” NDN’s published Digital Millennium Copyright Act (“DMCA”) Copyright Infringement Notification and Counter-Notification Procedure states that “NDN does not independently confirm that all content made available through the NDN Sites or Services is provided by a valid rights holder.” Nevertheless, “[i]n the event that NDN becomes aware that a person who is not a valid rights holder has provided content published on or through an NDN Site or through a Service, NDN may, in appropriate circumstances, disable and/or terminate the publication of such content.”

24. Because NDN had no authority to use or display FNN’s copyrighted content, on October 15, 2014, FNN notified NDN of the infringement of FNN’s copyrights in the Special Report Segment, and sent NDN a take-down notice pursuant to the DMCA, 17 U.S.C. § 512. Upon information and belief, NDN thereafter removed the Special Report Segment from its servers.

25. On March 24, 2015, FNN, through undersigned counsel herein, notified counsel for NJMG in writing about NJMG’s unauthorized use of the Special Report Segment on its NorthJersey.com website. In this letter, FNN informed NJMG that its display of the Special Report Segment violated both the Copyright Act by displaying FNN’s copyrighted work, 17 U.S.C. § 106, and the Lanham Act by falsely suggesting that FNN had endorsed and/or is affiliated with NJMG, 15 U.S.C. § 1125(a). No such endorsement or affiliation existed then, and no such endorsement or affiliation exists now. Further, FNN asked NJMG to explain the “facts and circumstances surrounding the use of the [Special Report Segment] by [NJMG], including the date the Video first appeared on NorthJersey.com, how North Jersey obtained the Video, and any revenues or other benefits associated with North Jersey’s use of the Video.” In the letter, FNN also asked “whether and to what extent other [FNN] content has appeared on

NorthJersey.com,” and demanded that NJMG “cease its unauthorized use of [FNN’s] content and brand, and account for its past infringements.”

26. Neither NJMG nor its counsel responded to FNN’s letter. Instead, in early April 2015, counsel for FNN herein received a letter from Chris Camerieri, VP and General Counsel of NDN. In that letter, NDN stated that it had “immediately removed [the Special Report Segment] from NDN’s service” when it received the DMCA take-down notice in October. The NDN letter did not address NJMG’s role in selecting the Special Report Segment for display, nor did it provide any information on when the Special Report Segment first appeared on NorthJersey.com, or whether and how NJMG generated revenue via its display of the Special Report Segment.

27. To this day, FNN has not received an explanation as to (1) when the Special Report Segment first appeared on NorthJersey.com; (2) how NJMG selected the Special Report Segment for display at <http://video.northjersey.com>; or (3) whether and how NJMG derived any revenues or other benefits from its display of the Special Report Segment.

28. Further, in early April 2015, counsel for FNN informed counsel for NJMG that FNN had identified other unauthorized infringing uses of FNN’s copyrighted works on NJMG’s website. However – as described below – NJMG has not removed those videos or otherwise taken any actions to remedy those infringements.

NJMG’S INFRINGING ACTS – THE CHRISTIE-WALLACE INTERVIEW

29. On or about October 26, 2014, NJMG displayed a portion of the Christie-Wallace Interview on its website, at the URL <http://www.northjersey.com/news/feds-press-nj-and-ny-to-reconsider-mandatory-ebola-quarantine-policy-video-1.1118340>. A screenshot depicting this display of the Christie-Wallace Interview is annexed hereto as **Exhibit B**.

30. As can be seen in Exhibit B, the Christie-Wallace Interview is displayed within a news article written by NJMG “STAFF WRITERS” Jim Norman, Melissa Hayes, and Minjae Park concerning the October 2014 New Jersey Ebola quarantine. The Christie-Wallace Interview appears in the middle of the article, and below a sub-headline reading “Feds press NJ and NY to reconsider mandatory Ebola quarantine policy [video].”

31. Upon information and belief, whenever a user attempts to watch the Christie-Wallace Interview on NorthJersey.com, NJMG displays a video advertisement for a third-party company, typically lasting approximately 30 seconds. When displaying the Christie-Wallace Interview, the video player gives the viewer the ability to share the video on Facebook or Twitter, or via e-mail.

32. NJMG posted the Christie-Wallace Interview without authorization from FNN.

33. As of June 11, 2015, NJMG continues to display the Christie-Wallace Interview on NorthJersey.com.

NJMG’S INFRINGING ACTS – THE POTUS SPEECH COVERAGE

34. On or before March 26, 2015, NJMG displayed a portion of the POTUS Speech Coverage on its website, at the URL <http://video.northjersey.com/Im-pretty-sure-Ill-take-some-actions-some-in-Congress-will-not-like-28108666>, above a caption reading “I’m pretty sure I’ll take some actions some in Congress will not like.” A screenshot depicting this display of the POTUS Speech Coverage is annexed hereto as **Exhibit C**.

35. As can be seen in Exhibit C, the NorthJersey.com page on which the POTUS Speech Coverage appears is nearly identical to that on which the Special Report Segment appeared. Specifically, it features a banner that reads “NorthJersey.com Studio”; it has a panel of thumbnails on the right-hand side of the screen that link to “Top Trending Videos”; and below

the POTUS Speech Coverage there are thumbnails that appear to link to other videos, sorted by categories, including “NorthJersey.com,” “Editors’ Picks,” “NJ News,” and “Must See.”

36. Upon information and belief, whenever a user attempts to watch the POTUS Speech Coverage on NorthJersey.com, NJMG displays a video advertisement for a third-party company, typically lasting approximately 30 seconds. When displaying the POTUS Speech Coverage, the video player gives the viewer the ability to share the video on Facebook or Twitter, or via e-mail.

37. NJMG displayed the POTUS Speech Coverage without authorization from FNN.

38. As of June 11, 2015, NJMG continues to display the POTUS Speech Coverage on NorthJersey.com.

FIRST CAUSE OF ACTION
(Copyright Infringement [Special Report Segment] – 17 U.S.C. § 501)

39. FNN repeats and realleges the allegations of paragraphs 1 through 38 of these Counterclaims as if fully set forth herein.

40. The Special Report Segment is an original creative work. FNN owns the copyrights in the Special Report Segment. FNN has registered its copyrights in the Special Report Segment with the United States Copyright Office.

41. NJMG directly and/or secondarily infringed FNN’s copyrights in the Special Report Segment by displaying it, or contributing to its display, on NJMG’s website, and thereby disseminating it publicly via the internet, in or around October 2014.

42. Upon information and belief, NJMG’s infringement was willful in nature.

43. By reason of the foregoing act of copyright infringement and the likelihood of continued copyright infringement by NJMG, FNN has sustained and will continue to sustain substantial damages in an amount presently unknown but to be determined at trial.

SECOND CAUSE OF ACTION
(Copyright Infringement [Christie-Wallace Interview] – 17 U.S.C. § 501)

44. FNN repeats and realleges the allegations of paragraphs 1 through 43 of this Counterclaim as if fully set forth herein.

45. The Christie-Wallace Interview is an original creative work. FNN owns the copyrights in the Christie-Wallace Interview. FNN has registered its copyrights in the Christie-Wallace Interview with the United States Copyright Office.

46. NJMG directly and/or secondarily infringed FNN's copyrights in the Christie-Wallace Interview by displaying it, or contributing to its display, on NJMG's website, and thereby disseminating it publicly via the internet in and since October 2014.

47. Upon information and belief, NJMG's infringement was, and is, willful in nature.

48. NJMG has not removed the Christie-Wallace Interview from its website, and therefore continues to infringe FNN's copyrights in the Christie-Wallace Interview.

49. By reason of the foregoing act of copyright infringement and the likelihood of continued copyright infringement by NJMG, FNN has sustained and will continue to sustain substantial damages in an amount presently unknown but to be determined at trial.

THIRD CAUSE OF ACTION
(Copyright Infringement [POTUS Speech Coverage] – 17 U.S.C. § 501)

50. FNN repeats and realleges the allegations of paragraphs 1 through 49 of this Counterclaim as if fully set forth herein.

51. The POTUS Speech Coverage is an original creative work. FNN owns the copyrights in at least some of the content that appears in the POTUS Speech Coverage, including but not limited to the content that appears in the lower third of the video display. FNN has registered its copyrights in its original contribution to the POTUS Speech Coverage with the United States Copyright Office.

52. NJMG directly and/or secondarily infringed FNN's copyrights in its original contribution to the POTUS Speech Coverage by displaying it, or contributing to its display, on NJMG's website, and thereby disseminating it publicly via the internet in or since November 2014.

53. Upon information and belief, NJMG's infringement is willful in nature.

54. NJMG has not removed the POTUS Speech Coverage from its website, and therefore continues to infringe FNN's copyrights in its contributions to the POTUS Speech Coverage.

55. By reason of the foregoing act of copyright infringement and the likelihood of continued copyright infringement by NJMG, FNN has sustained and will continue to sustain substantial damages in an amount presently unknown but to be determined at trial.

FOURTH CAUSE OF ACTION
(False Endorsement [Special Report Segment] – 15 U.S.C. § 1125(a))

56. FNN repeats and realleges the allegations of paragraphs 1 through 55 of this Counterclaim as if fully set forth herein.

57. The Special Report Segment was originally published by FNN. As set forth above, the famous and distinctive FOX NEWS mark appears at the bottom left of the screen throughout the Special Report Segment, and FNN's SPECIAL REPORT mark appears at the bottom right of the screen for all but four seconds of the segment. The Special Report Segment also displays the famous and distinctive FOX and FOX NEWS marks and FNN's FNC mark. The Special Report Segment also contains depictions of Bret Baier, a well-known FNN personality.

58. By posting the Special Report Segment on its website alongside NJMG's marks – including under a banner that reads "NorthJersey.com Studio" – NJMG has used FNN's name, marks, and symbols in commerce in connection with NJMG's own goods and services.

59. NJMG's unauthorized actions are likely to cause confusion and mistake and are likely to deceive as to NJMG's affiliation or association – of which there is none – with FNN.

60. NJMG's unauthorized actions are also likely to cause confusion and mistake and are likely to deceive as to NJMG's endorsement or approval – of which there is none – by FNN.

61. NJMG has falsely exploited FNN's marks and other goodwill in connection with NJMG's goods and services, and has caused FNN significant injury, including but not limited to diminishing the value of FNN's marks.

FIFTH CAUSE OF ACTION
(False Endorsement [Christie-Wallace Interview] – 15 U.S.C. § 1125(a))

62. FNN repeats and realleges the allegations of paragraphs 1 through 61 of this Counterclaim as if fully set forth herein.

63. The Christie-Wallace Interview was originally published by FNN. As set forth above, the famous and distinctive FOX NEWS SUNDAY mark appears at the bottom left of the screen for the entire interview, and appears elsewhere on the screen at times during the interview. The Christie-Wallace Interview also displays the famous and distinctive FOX mark, displays FNN's FNC mark, and contains depictions of Chris Wallace, a well-known FNN personality.

64. By posting the Christie-Wallace Interview on its website alongside NJMG's marks – including above a news story that appears to have been written by NJMG's journalists – NJMG has used FNN's name, marks, and symbols in commerce in connection with NJMG's own goods and services.

65. NJMG's unauthorized actions are likely to cause confusion and mistake and are likely to deceive as to NJMG's affiliation or association – of which there is none – with FNN.

66. NJMG's unauthorized actions are also likely to cause confusion and mistake and are likely to deceive as to NJMG's endorsement or approval – of which there is none – by FNN.

67. NJMG has falsely exploited FNN's marks and other goodwill in connection with NJMG's goods and services, and has caused FNN significant injury, including but not limited to diminishing the value of FNN's marks.

SIXTH CAUSE OF ACTION
(False Endorsement [POTUS Speech Coverage] – 15 U.S.C. § 1125(a))

68. FNN repeats and realleges the allegations of paragraphs 1 through 67 of this Counterclaim as if fully set forth herein.

69. The POTUS Speech Coverage was originally published by FNN. The famous and distinctive FOX NEWS mark appears at the bottom left of the screen throughout the POTUS Speech Coverage. The POTUS Speech Coverage also displays the famous and distinctive FOX NEWS and FOX BUSINESS marks, and FNN's FNC mark.

70. By posting the POTUS Speech Coverage on its website alongside NJMG's marks – including under a banner that reads “NorthJersey.com Studio” – NJMG has used FNN's name, marks, and symbols in commerce in connection with NJMG's own goods and services.

71. NJMG's unauthorized actions are likely to cause confusion and mistake and are likely to deceive as to NJMG's affiliation or association – of which there is none – with FNN.

72. NJMG's unauthorized actions are also likely to cause confusion and mistake and are likely to deceive as to NJMG's endorsement or approval – of which there is none – by FNN.

73. NJMG has falsely exploited FNN's marks and other goodwill in connection with NJMG's goods and services, and has caused FNN significant injury, including but not limited to diminishing the value of FNN's marks.

WHEREFORE, Counterclaimant Fox News Network, LLC respectfully prays that this Court grant judgment to Fox News Network, LLC as to the above Counterclaims, as follows:

- A. Adjudging and decreeing that NJMG has infringed FNN's copyrights in the Special Report Segment, in the Christie-Wallace Interview, and in its original contributions to the POTUS Speech Coverage; and
- B. Adjudging and decreeing that NJMG has violated the Lanham Act by causing confusion or mistake as to its endorsement by and/or affiliation with FNN through NJMG's use of the Special Report Segment, POTUS Speech Coverage, and Christie-Wallace Interview; and
- C. Awarding FNN damages, including without limitation statutory damages, compensatory damages, and/or punitive damages for the infringement of FNN's copyrights; and
- D. Awarding FNN damages, including without limitation compensatory and/or punitive damages for NJMG's violations of the Lanham Act; and
- E. Requiring NJMG to disgorge any fees, profits, or money to FNN by which it has been unjustly enriched; and
- F. Granting FNN its costs and disbursements of this action, including reasonable attorneys' fees; and
- G. Awarding FNN pre-judgment and post-judgment interest on each and every damage award; and
- H. Granting such other, further, or different relief as the Court deems just and proper.

JURY DEMAND

Counterclaimant Fox News Network, LLC demands a trial by jury on all issues so triable.

Dated: New York, New York
June 11, 2015

Respectfully submitted,

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