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8

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 HERRING NETWORKS, INC.,

13 Plaintiff,

14 v.

15 RACHEL MADDOW; COMCAST
16 CORPORATION; NBCUNIVERSAL
MEDIA, LLC; and MSNBC CABLE
17 L.L.C.,

18 Defendants.
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CASE NO. '19CV1713 JAH BGS

**COMPLAINT FOR DEFAMATION
AND DAMAGES**

DEMAND FOR JURY TRIAL

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1 Plaintiff Herring Networks, Inc., (“Plaintiff” or “Herring Networks”), by and
2 through its undersigned attorneys, alleges against Defendants Rachel Maddow,
3 Comcast Corporation (“Comcast”), NBCUniversal Media, LLC (“NBC Universal”),
4 and MSNBC Cable LLC (“MSNBC Cable”) (collectively, “Defendants”), as
5 follows:

6 **INTRODUCTION**

7 1. Plaintiff owns and operates One America News Network (“OAN”), an
8 independent media organization focused on providing national and international
9 news coverage. OAN’s news channel has risen rapidly in prominence and
10 popularity. OAN has become an important voice in American news, providing
11 Americans with a conservative alternative to the major liberal news outlets.

12 2. Comcast is the nation’s largest provider of cable television. Comcast
13 has refused to carry OAN as part of its cable programming because OAN counters
14 the liberal politics of Comcast’s own news channel, MSNBC.

15 3. In July 2019, OAN’s President, Charles Herring, called out and
16 objected to Comcast’s anti-competitive censorship of OAN in an email to Comcast’s
17 President of Content Acquisition.

18 4. A week later, MSNBC’s most popular show—The Rachel Maddow
19 Show—opened with a hit piece on OAN. The show’s host, Rachel Maddow
20 (“Maddow”), told her audience that OAN “*really literally is paid Russian*
21 *propaganda*” (emphasis added).

22 5. Maddow’s statement is utterly and completely false. OAN is wholly
23 owned and financed by the Herrings, an American family. OAN has never been
24 paid or received a penny from Russia or the Russian government.

25 6. Defendants made this false claim to smear OAN’s reputation in
26 retaliation for Plaintiff’s insistence that Defendants treat OAN fairly and offer the
27 OAN news channel to Comcast subscribers.

28 7. By this action, OAN seeks to hold Defendants accountable for their

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1 malicious and reprehensible conduct.

2 **PARTIES**

3 8. Plaintiff is a California corporation with its principal place of business
4 in San Diego, California.

5 9. Maddow is an individual residing in New York, New York.

6 10. Comcast is a Pennsylvania corporation with its principal place of
7 business in Philadelphia, Pennsylvania.

8 11. NBC Universal is a Delaware limited liability company with its
9 principal place of business in Los Angeles, California.

10 12. MSNBC Cable is a Delaware limited liability company with its
11 principal place of business in New York, New York.

12 **JURISDICTION AND VENUE**

13 13. This Court has subject matter jurisdiction over Plaintiff’s claim for
14 defamation pursuant to 28 U.S.C. § 1332 because the claim is between citizens of
15 different states and the amount in controversy exceeds \$75,000. Plaintiff is a citizen
16 of California. Maddow is a citizen of New York. Comcast is a citizen of
17 Pennsylvania. NBC Universal is a citizen of Pennsylvania and Delaware, by virtue
18 of the citizenship of its sole member. MSNBC Cable is a citizen of Pennsylvania
19 and Delaware by virtue of the citizenship of its member(s).

20 14. Venue is appropriate in this judicial district pursuant to 28 U.S.C. §
21 1391(b)(3) because Defendants are subject to personal jurisdiction in this District.

22 15. This Court has personal jurisdiction over Defendants because each
23 Defendant conducts business and/or owns property in California. Therefore, each
24 Defendant has sufficient contacts with the State of California so as to render the
25 exercise of jurisdiction over them proper. The claim alleged herein arises from
26 Defendants’ contacts with the State of California.

27 **FACTS**

28 16. The Herring family launched OAN on July 4, 2013, to deliver timely

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1 national and international news 24 hours a day. The OAN channel is carried on
2 satellite, cable and streaming providers.

3 17. OAN features news programming, political talk shows, and special
4 documentary-style reports. In just a few years, OAN has become the fourth-highest
5 rated national news network as measured by a leading cable provider and is greatly
6 outperforming other emerging cable news networks. OAN is a leading conservative
7 voice in American news.

8 18. OAN is owned and operated by Herring Networks, which is wholly-
9 owned by members of the Herring family. The Herrings are proud, dedicated and
10 loyal Americans; and they alone own and finance OAN.

11 19. Defendant Comcast is both the largest cable provider in the United
12 States and a major entertainment company with numerous cable and broadcast
13 channels. Among its news channels is MSNBC, which Comcast owns and operates
14 through its subsidiaries NBC Universal and MSNBC Cable. MSNBC caters to and
15 promotes liberal politics.

16 20. Despite OAN’s rapid rise and growing audience, Comcast has refused
17 to carry OAN on its cable service. Comcast refuses to carry OAN because it
18 counters the liberal message of MSNBC. By this blatant censorship, Comcast is
19 depriving millions of its subscribers from hearing a different viewpoint.

20 21. On July 15, 2019, Charles Herring (“Herring”) emailed Gregory
21 Rigdon, the President of Content Acquisition for Comcast. Herring made a case for
22 adding OAN to the Comcast platform and stated his concern that Comcast is
23 refusing to carry OAN because Comcast opposes including another conservative
24 counter channel to counter MSNBC.

25 22. Exactly one week after that email, the most popular show on Comcast’s
26 news channel, MSNBC, ran a hit piece on OAN. It happened like this:

27 **A. Kristian Rouz and The Daily Beast Article**

28 23. One of OAN’s employees is a young man named Kristian Rouz

1 (“Rouz”). Rouz collects and analyzes articles from other sources and writes articles
2 based on those sources for OAN. Rouz’s articles go through OAN’s editorial
3 process before they are published. Rouz does not have decision-making authority
4 with respect to the content that is aired on OAN.

5 24. Rouz was born in the Ukraine. When he moved to the United States,
6 he had no friends or family here. To make ends meet, Rouz began writing articles
7 for Sputnik News in 2014. Sputnik News is affiliated with the Russian government,
8 but Rouz chose the topics and viewpoints of the articles he wrote for Sputnik News.
9 Rouz’s articles provided updates about various topics in global economics and
10 international finance.

11 25. The headlines of Rouz’s articles for Sputnik News include: “N. Ireland
12 Pessimistic About UK Economy Amid Weaker Regional Growth – Poll”; “South
13 Africa’s Struggling Utility Eskom Raises \$361 Mln to Keep Lights On”; “Japan Q1
14 GDP Beats Expectations Despite Weak Consumer Spending”; and “Turkish Central
15 Bank Relaxes Policy, Warns Against FX Purchases to Support Lira.”

16 26. Rouz has never been a staff employee of Sputnik News. He worked as
17 a freelancer for Sputnik News and his work there had no relation to his work for
18 OAN. Rouz submitted articles to Sputnik on his own and would receive
19 approximately \$40 if the articles were accepted.

20 27. On July 22, 2019, the Daily Beast—an online publication—published
21 an article entitled, “Trump’s New Favorite Channel Employs Kremlin-Paid
22 Journalist.” The article was written by Kevin Poulsen (“Poulsen”), also known as
23 “Dark Dante”—the first computer hacker ever to be charged with espionage against
24 the United States government.

25 28. Poulsen spent 17 months as a fugitive from the law before being
26 arrested in 1991. In 1995, Poulson pleaded guilty to seven counts of conspiracy,
27 fraud and intercepting wire communications. He received the longest prison
28 sentence ever for a computer hacker at that time. United States law enforcement has

1 referred to him as “the Hannibal Lecter of computer crime.”

2 29. Poulsen’s article identified Rouz as “on the payroll” of Sputnik News.
3 But Poulsen did not identify any facts tying Rouz’s work for OAN to Sputnik News
4 or the Russian government; and that is because there never have been, and are, no
5 such facts.

6 **B. Rachel Maddow**

7 30. Maddow is a liberal television host with a show on MSNBC called
8 “The Rachel Maddow Show.”

9 31. Maddow is obsessed with conspiracy-mongering about a connection
10 between Russia and President Donald Trump. Her obsession is so pronounced that
11 even other media outlets have called her out for her lack of journalistic integrity.

12 32. On March 28, 2019, for example, the Guardian published an editorial
13 entitled, “Will Rachel Maddow Face a Reckoning Over Her Trump-Russia
14 Coverage?” And a March 27, 2019, editorial published in Politico noted: “For the
15 past two years, Rachel Maddow has been a hero of her own spy-thriller.” The
16 editorial details Maddow’s “deep delusion” with Russian conspiracies.

17 33. On April 12, 2017, The Intercept published an article entitled
18 “MSNBC’s Rachel Maddow Sees A ‘Russia Connection’ Lurking Around Every
19 Corner.” The article noted that MSNBC and Maddow have “played a key role in
20 stoking the frenzy over Trump’s alleged involvement with Russian meddling in the
21 U.S. presidential race[.]”

22 34. The Intercept conducted a quantitative study of all 28 episodes of The
23 Rachel Maddow Show in the six-week period between February 20 and March 21,
24 2017. Russia-focused segments accounted for 53 percent of these broadcasts. In
25 16 of the 28 episodes analyzed, Russia comprised either all or a substantial part of the
26 “A-block,” the show’s headlining and lengthiest segment.

27 **C. Rachael Maddow’s Malicious and False Claim that OAN “Really**
28 **Literally is Paid Russian Propaganda”**

1 35. On July 22, 2019, Maddow’s show featured a segment on OAN
2 entitled, “Staffer on Trump-favored network is on propaganda Kremlin payroll.” A
3 copy of the transcript for the segment is attached hereto as Exhibit A (and the video
4 will be shown at trial).

5 36. The segment was part and parcel of Maddow’s obsession with drawing
6 connections between President Trump and the Russian government. Maddow began
7 by stating that President Trump gave OAN a “pass for access to the White House
8 grounds and a permanent seat in the White House briefing.” Maddow noted that
9 President Trump “quot[ed] this little news outlet and frequently t[old] people that
10 they should be watching them.”

11 37. Maddow proceeded to report on Poulsen’s article in The Daily Beast.
12 Maddow failed to mention Poulsen’s shadowy, criminal history.

13 38. Then, Maddow made a new, false and maliciously defamatory claim—
14 a claim not in Poulsen’s Daily Beast article. Maddow said, “In this case, the most
15 obsequiously pro-Trump right wing news outlet in America *really literally is paid*
16 *Russian propaganda*” (emphasis added).

17 39. Maddow’s claim that OAN “really literally is paid Russian
18 propaganda” is false and intended to malign and harm OAN. OAN is not paid by
19 the Russian government. In fact, OAN has taken no money outside the Herring
20 family whatsoever. None of OAN’s content comes from the Russian government.

21 **D. Defendants’ Defense: “Literally” Doesn’t Mean “Literally”**

22 40. On July 25, 2019, OAN wrote to Comcast and Maddow pursuant to
23 Code of Civil Procedure § 48, demanding a retraction of this false statement.
24 Copies of these letters are attached hereto as Exhibits B and C.

25 41. Defendants refused to retract or correct their defamatory statement
26 about OAN. On August 6, 2019, counsel for NBC Universal claimed that when
27 Maddow—a graduate of Stanford and Oxford Universities and a Rhodes Scholar—
28 said, “literally,” she actually meant, “*not being literally true.*” (emphasis added).

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1 42. The lawyer’s letter argued, bizarrely, that “literally” was the “kind of
2 figure of speech that connoted opinion.” Attached hereto as Exhibit D is a copy of
3 NBC Universal’s letter.

4 43. Maddow’s statement was not opinion. Moreover, it implied facts that
5 were not in the Daily Beast article, including:

- 6 • OAN is paid by the Russian government for running content prepared
- 7 for or at the direction of the Russian government; and/or
- 8 • Rouz is paid by the Russian government for preparing content for OAN
- 9 for or at the direction of the Russian government.

10 44. These assertions were intended to be, and are, false and malicious
11 and/or were made with reckless disregard for the truth. They were made because
12 OAN, unlike MSNBC, presents a conservative viewpoint and to retaliate against
13 OAN for calling out Defendants for their anti-competitive censorship in refusing to
14 distribute OAN.

15 **FIRST CAUSE OF ACTION**

16 **(Defamation)**

17 45. Plaintiff repeats and re-alleges the allegations contained in the
18 preceding and subsequent paragraphs of this Complaint, as though set forth fully
19 herein.

20 46. Maddow, MSNBC Cable, NBC Universal, and Comcast made a false
21 statement about Plaintiff. Specifically, on July 22, 2019, Maddow made the
22 statement during a segment on The Rachel Maddow Show that OAN “really literally
23 is paid Russian propaganda.” Viewers of the segment reasonably understood that
24 this statement was about Plaintiff.

25 47. MSNBC Cable, NBC Universal, and Comcast took a responsible part
26 in the publication of this statement. The statement was published on MSNBC
27 Cable’s cable-news channel, and MSNBC Cable has editorial control over the
28 content of The Rachel Maddow Show. Upon information and belief, Comcast and

1 NBC Universal were involved in the statement as retaliation for Plaintiff's
2 insistence that Defendants treat OAN fairly and offer its news channel to Comcast
3 subscribers.

4 48. Maddow's assertion that OAN "really literally is paid Russian
5 propaganda" was a false statement of fact. OAN is not paid by the Russian
6 government, none of OAN's content comes from the Russian government, and OAN
7 is not owned or controlled by Russia.

8 49. Additionally, the statement implied the following false assertions of
9 fact:

- 10 • OAN is paid by the Russian government for running content prepared
11 for or at the direction of the Russian government; and/or
- 12 • Rouz is paid by the Russian government for preparing content for OAN
13 for or at the direction of the Russian government.

14 50. Maddow, MSNBC Cable, NBC Universal and Comcast knew this
15 statement was false and acted maliciously and/or with reckless disregard as to its
16 truth.

17 51. Because of the facts and circumstances known to the viewers, the
18 statement tended to injure Plaintiff's news business and exposed Plaintiff to hatred,
19 contempt and ridicule and discouraged others from associating and dealing with
20 Plaintiff, including by discouraging advertising on OAN's news channel.

21 52. This statement constitutes defamation *per se* because it is damaging on
22 its face to Plaintiff's business and reputation; indeed, the statement amounts to a
23 charge of treason and disloyalty to the United States of America.

24 53. Plaintiff has suffered harm to its business and reputation and incurred
25 expenses to correct the false statement. Among other things, OAN generates
26 revenue from advertising, and the false statement has and/or will result in lost
27 revenues for Plaintiff.

28 54. Maddow, MSNBC Cable, NBC Universal, and Comcast acted with

1 oppression, fraud and malice. Plaintiff is therefore entitled to punitive damages.

2 55. Plaintiff has complied with Code of Civil Procedure § 48a. Plaintiff
3 demanded correction of Defendants’ false statement on July 25, 2019. Defendants
4 refused.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully prays for a judgment against Defendants
7 for:

- 8 (1) Compensatory damages in excess of \$10,000,000, or as will be proven at
- 9 trial;
- 10 (2) Punitive damages;
- 11 (3) Prejudgment interest;
- 12 (4) Attorneys’ fees;
- 13 (5) Costs of suit; and
- 14 (6) Such other relief that the Court deems proper.

15
16 DATED: September 9, 2019

MILLER BARONDESS, LLP

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18
19 By: /s/ Amnon Z. Siegel

AMNON Z. SIEGEL

Attorneys for Plaintiff

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