

# Exhibit C



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May 26, 2023

**VIA EMAIL**

Brian Ledebuhr  
Vedder Price  
222 N. LaSalle Suite 2300  
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Re: *Smartmatic USA Corp., et al. v. Herring Networks, Inc., d/b/a One America News Network*, Case No. 1:21-cv-02900-CJN (D.D.C.)

Dear Counsel:

We write in response to Herring Networks, Inc.'s ("OANN") letter dated May 17, 2023 regarding search terms to be run across OANN's custodians. Smartmatic responds to OANN's counter proposals in Appendix C.4 and D.4 below. Also included in this letter is further follow-up on OANN's May 15 letter regarding custodians.

**Appendix C.4**

**Search No. 71.** Smartmatic agrees to OANN's proposal. Smartmatic reserves the right to expand or change this search term if it determines that OANN's document production is not sufficient.

**Search No. 73.** OANN's proposal for search term 73 in Appendix C.4 is still insufficient. OANN's proposal still does not contain key words such as "accurate/accuracy," "guest," "investigate/investigation," and "truth." These key words must be included in this search so that any policy or guidelines with regard to these topics can be identified. The issues of whether OANN has policies in place related to these topics, and whether OANN potentially violated those policies, are directly relevant to actual malice. If OANN will not agree to Smartmatic's April 27 proposal, then the parties have reached an impasse, and Smartmatic will raise the dispute with the Court.

Smartmatic requests that OANN respond as to whether it accepts Smartmatic's proposal as to Search No. 73 by May 31, 2023.

**Appendix D.4**

For **Search Nos. 22, 64.1, 66.2, 66.3, 69.1, 69.2, 73, 83, and 123.1**, Smartmatic agrees to OANN's counterproposals as laid out in Appendix D.4. Smartmatic reserves the right to expand or change these search terms if it determines that OANN's document production is not sufficient.

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**Search Nos. 18.1 and 18.2.** Smartmatic will agree to OANN’s proposal in Appendix D.4 for searches 18.1 and 18.2. if OANN is amenable to changing ((vot\* OR elec\*) w/10 fraud\*) to ((vot\* OR elec\*) w/25 fraud\*).

**Search No. 23.** Please clarify if OANN intended to discuss on p. 4 of its May 17 letter Search Term 23, as opposed to 33. Assuming that OANN intended to reference Search Term 23, not 33, Smartmatic agrees to OANN’s counterproposals as laid out in Appendix D.4. Smartmatic reserves the right to expand or change these search terms if it determines that OANN’s document production is not sufficient.

**Search No. 33.1.** OANN notes in Appendix D.4 that the term “not” is a noise word that is not properly captured in searches on Relativity. In light of this note, Smartmatic agrees to use the term “not true.” Smartmatic does not agree to the proximity operator of “w/10.” Smartmatic stands by its April 27 proposal to use the proximity operator of “w/25.”

**Search No. 65.1.** With regard to this search term, OANN stood on its May 5 proposal and did not offer an additional counterproposal in response to Smartmatic’s May 11 proposal. Smartmatic is willing to remove “\*oann.com” from the search term. Smartmatic will not agree to change the proximity operator from “w/25” to “w/10.” Because Smartmatic has agreed to remove “\*oann.com,” there will likely be less hits, and there is no reason to limit the search yet again with a smaller proximity operator.

Smartmatic requests that OANN respond as to whether it accepts Smartmatic’s proposals as to Search Terms 18.1, 18.2, 23, 33.1, and 65.1 by May 31, 2023.

### **Temporal Scope**

In OANN’s May 5, 2023 letter, in response to Smartmatic’s proposal that “Smartmatic” and “Dominion” searches be run without date limitations, OANN stated, “Herring agrees to run the searches consistent with Plaintiff’s proposals.” Now, in its May 17 letter, OANN reneges on this agreement. OANN’s assertion that the scope is too broad now that they have agreed to 35 additional custodians is non-sensical, given that OANN knew on May 5, when it agreed to the temporal scope, that Smartmatic would be proposing additional OANN custodian designations. Because OANN’s defamation campaign spanned over six months and involved dozens of OANN employees and guests, these searches are entirely proportionate to the needs of this case.

In Smartmatic’s First Set of Requests for Production, Smartmatic did not include a time limitation for RFP Nos. 1 and 2 regarding Smartmatic and Dominion. In its responses and objections, OANN agreed to produce documents in response to these requests. In its May 17 letter, OANN alleges that it did not report on Smartmatic or Dominion before 2020, and that Smartmatic has presented no facts to the contrary. As OANN well knows, Smartmatic has no way of knowing what OANN’s history of reporting on or knowledge of Smartmatic and Dominion was prior to 2020. And if OANN’s assertion is correct—that OANN did not report on Smartmatic or Dominion before 2020—then the universe of documents will likely be small and easy for OANN to review.

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Additionally, OANN states that the term “present” is ever-changing. As Smartmatic clarified to OANN in its letter dated January 3, 2023, “present” is the date on which Smartmatic served its First Set of Requests for Production, *i.e.*, October 21, 2022. The parties have discussed this numerous times. (*See e.g.*, Smartmatic March 28, 2023 Letter, p. 7.) OANN must stop feigning ignorance. Smartmatic further asserts that documents referencing Smartmatic or Dominion after the defamatory campaign publicly ended are still entirely relevant to this dispute.

Smartmatic is willing to limit the temporal scope of these requests to January 1, 2014 to October 21, 2022. If OANN is unwilling to agree to this temporal scope, the parties are at an impasse, and Smartmatic will raise this issue with the Court.

Smartmatic requests that OANN respond as to whether it accepts Smartmatic’s proposal as to temporal scope by May 31, 2023.

### **OANN Custodians**

On May 17, via email, Smartmatic requested that OANN provide justification as to why the 21 individuals identified in OANN’s May 15 letter are not relevant and should not be designated as OANN custodians.

Smartmatic requests that OANN provide a response regarding these 21 individuals by May 31, 2023.

Based on further review, Smartmatic has identified additional individuals that it believes should be designated as OANN custodians. That list includes:

- Jennesh Agagas, Booking Producer for Tipping Point with Kara McKinney
- Derek Blashinsky, Senior Vice President of Programmatic Advertising
- Amanda Brilhante, Anchor
- Allyssia Britton, former Producer
- Justin Brown, Executive Producer for Real America with Dan Ball
- Aaron Cornils, System Engineer
- Camryn Kinsey, Booking Producer/White House Correspondent
- Marco Rodriguez, Editor
- Ann Schick, Content Distribution of Herring Networks/Vice President of Affiliate Relations
- Jezzamine Wolk, Anchor and Producer

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Smartmatic requests that OANN respond as to whether it accepts Smartmatic's proposal designate the individuals listed above as custodians by May 31, 2023.

Very truly yours,

BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP

/s/ Olivia E. Sullivan

Olivia E. Sullivan