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Case No. N25C-06-251 SPL

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

GAVIN C. NEWSOM,	:	
Plaintiff,	:	
v.	:	C.A. No. N25C-06-251 SPL
FOX NEWS NETWORK, LLC,	:	
Defendant.	:	

APPLICATION OF FOX NEWS NETWORK, LLC FOR CERTIFICATION OF THE COURT'S APRIL 30, 2026 ORDER FOR INTERLOCUTORY APPEAL TO THE DELAWARE SUPREME COURT

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DATED: May 18, 2026

The Court should certify its April 30 Order for review so that the Delaware Supreme Court can enforce the rigorous First Amendment limits on libel claims by public officials and bring a swift end to this frivolous defamation action by the Governor of California. To ensure that the country's most powerful political leaders do not weaponize libel suits to silence their critics, the First Amendment imposes "a particularly high standard of liability" for defamation claims brought by "public officials" relating to their "official conduct." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 270–71 (1971). Public officials can maintain such suits only where a defendant publishes with "actual malice"—that is, with "a high degree of awareness of probable falsity." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 667 (1989) (ellipsis omitted). In essence, this standard permits public officials to recover only for a "calculated falsehood"—a "lie, knowingly and deliberately published." *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964).

Here, the allegations cannot reasonably support a conclusion that Fox News Network, LLC (Fox News) published a knowing lie when it reported and commented on Governor Newsom's own tweet—a post whose plain language indisputably conveyed a message different from what the governor claims he *meant*. The Order nonetheless permits Newsom to proceed with a defamation claim for nearly one billion dollars based on his conclusory allegation that Fox News has a "perverse internal culture and slavish partisan mission" and wishes to "harm him politically."

Order 33–34. But an accusation that commentary is "one sided . . . has no tendency to prove that the publisher believed it to be false." *Epps v. Fox News Network, LLC*, 2026 WL 1266101, at *14 (D. Del. May 8, 2026). By diluting the actual malice standard, the Order keeps alive a suit that commentators have recognized as meritless, *see* Eriq Gardner, *Trump Defamation Theories and Newsom's Weak Case*, Puck (May 5, 2026), and that Newsom himself has treated as a political stunt and fundraising tool, *see* Marlow Stern, *Bill Maher Grills Gavin Newsom Over Suing Fox News: 'You Are Imitating' Trump*, Variety (May 1, 2026).

If this case proceeds at all—and it should not—the Court should not have permitted Newsom to pursue it in Delaware, a State with no link to the events at issue and where Newsom filed to evade the strict limitations on libel lawsuits under his own State's anti-SLAPP statute. The Court should have dismissed for *forum non conveniens* and forced Newsom to face the speech-protective standards that apply in his own State's courts. Instead, the Court proceeded to decide novel questions under California's libel correction statute.

These errors on "substantial issues of material importance," Rule 42(b)(i), warrant immediate review to ensure the Governor of California does not misuse the Delaware courts to attack free speech.

BACKGROUND

On June 10, 2025, as riots raged in Los Angeles, President Trump said during

an Oval Office press conference that he had called Governor Newsom "a day ago" to tell him he was "doing a bad job" and causing a lot of "potential death." D.I.14 at ¶ 34. Newsom retorted on X: "There was no call. Not even a voicemail," adding that the President "doesn't even know who he's talking to." *Id.* at ¶ 35. But the President provided a call log to Fox News showing there was, in fact, a call—albeit three days earlier. That night, commenting on Newsom's mishandling of the riots, Fox News host Jesse Watters played a clip of the President describing the substance of the call, but left out Trump's claim that the call occurred "a day ago." *Id.* at ¶ 34. Watters then showed Newsom's tweet denying the call had occurred at all and asked: "Why would Newsom lie and claim that Trump never called him?" *Id.* at ¶ 75.

Without seeking a correction, Newsom sued for $787 million—the amount Fox News paid to settle the unrelated *Dominion* litigation—claiming that Watters defamed him because all he had *meant* to dispute was whether the call happened "a day ago." *Id.* at ¶ 34. Three days later, Fox News received a letter from Newsom's lawyers offering to withdraw the suit in exchange for a retraction. To avoid pointless litigation, Fox News issued the requested retraction. Watters explained that he "took [Newsom] to mean there was no call. Ever. Period." *Id.* at ¶ 75. "We thought the dispute was about whether there had been a call at all—not when." *Id.* He told viewers that Newsom "didn't deceive anybody on purpose. So, I'm sorry, he wasn't lying. He was just confusing and unclear." *Id.* Newsom reneged on his promise to

drop the suit and instead did a press tour in which he repeatedly accused Fox News of lying and said he looked forward to taking discovery from "the Murdoch family." @GavinNewsom, X (July 16, 2025). After the Order issued, Newsom took to X again, posting: "Fox News lies. We sued. A judge sided with us in an initial decision. Discovery will be fun!!!" @GavinNewsom, X (May 2, 2026).

REVIEW IS WARRANTED UNDER SUPREME COURT RULE 42(b)

I. The Order Decides "Substantial Issue[s] of Material Importance" Under Rule 42(b)(i).

The Court erroneously resolved three "substantial issue[s]" under Rule 42(b)(i)—that is, "main question[s] of law relating to the merits of the case"—that warrant immediate correction. *Pontone v. Milso Indus.*, 2014 WL 4967228, at *2 (Del. Ch. Oct. 6, 2014).

A. The Order Guts the Actual Malice Standard and Undermines First Amendment Rights for All Media Companies Suable in Delaware.

The Court's Order vitiated the constitutional actual malice standard in at least three respects, undermining the high barrier the U.S. Supreme Court has erected to libel suits by public officials.

First, the Order wrongly conflates the falsity and actual malice elements of a defamation claim, holding that if "the defendant's statement was probably false, the Court may infer that the defendant intended to avoid the truth." Order at 22. That misstates the law by ignoring the "significant difference between proof of actual malice and mere proof of falsity." *Bose Corp. v. Consumers Union*, 466 U.S. 485,

511 (1984). If falsity alone supported an inference of actual malice, then the actual malice standard would be superfluous—the opposite of what the U.S. Supreme Court intended. That Court held that only ***knowing*** falsehoods are actionable because false statements are "inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the 'breathing space' that they need to survive." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964) (ellipsis omitted).

Second, the Court wrongly permitted Newsom to pursue a libel claim based on Fox News's reasonable interpretation of Newsom's own words—ignoring the U.S. Supreme Court's instruction that a publisher's "rational interpretation[]" of an "ambigu[ous]" situation" is "not enough to create a jury issue of 'malice' under *New York Times*," even if it "arguably reflect[s] a misconception. *Time, Inc. v. Pape*, 401 U.S. 279, 290 (1971). Fox News rationally interpreted Newsom's tweet stating that "There was no call" to mean a call never took place, even though Newsom claims he meant to dispute only that there was no call *a day ago*. Fox News's understanding of Newsom's ambiguous words is simply not "the stuff of a $787 million defamation claim," as one commentator noted. *Newsom's Weak Case*, Puck (May 5, 2026).

Third, the Order held that Newsom met his pleading burden for actual malice with allegations that Fox News has a "slavish partisan mission" and wishes to "harm him politically." Order 33–34. But the U.S. Supreme Court has repeatedly made clear that allegations that a publisher is biased, has a "motive . . . to promote an

opponent's candidacy," or has engaged in even "an extreme departure from professional standards" do not add up to actual malice. *Harte-Hanks*, 491 U.S. at 664-65.

B. The *Forum Non Conveniens* Ruling Rewards Forum Shopping and Ignores California's Interests.

At a minimum, the Court should not have permitted Newsom to pursue his claim in Delaware. The Order misapplies the *forum non conveniens* doctrine by ignoring California's paramount interest in deciding whether laws adopted by California's Legislature prevent California's Governor from bringing a suit intended to stifle speech. California's anti-SLAPP law, in particular, provides for a threshold motion to strike with a "summary-judgment-like process" in which plaintiffs like Newsom must show "a probability they can produce clear and convincing evidence of actual malice." *Collins v. Waters*, 92 Cal.App.5th 70, 80 (2023). That standard imposes a far higher hurdle to suit than Delaware's "reasonably conceivable" pleading standard and would doom Newsom's claim at the threshold. The Court's observation that "Delaware courts are fully capable of applying California law" misses the point. Order 16. California's motion-to-strike standards are *procedural* and do not even apply in Delaware courts.

The Order also fails to follow *Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102 (Del. 2014), which "changed" "prior law" and held that Delaware courts must give "weight to a defendant's interest in having important issues of foreign law

decided by the courts whose law governs the case." *Id.* at 1109–11. In fact, the Order wrongly relies (at 16 & n.79) on an outdated case, *Berger v. Intelident Sols., Inc.*, 906 A.2d 134 (Del. 2006), that *Martinez* criticized. *See* 86 A.3d at 1112 & n.41. The governing principle here is that "when a dispute does not involve a matter where Delaware has a significant interest, it is important for Delaware to defer to the greater interest of a sister state." *Focus Fin. Ptrs. v. Holsopple*, 250 A.3d 939, 956 (Del. Ch. 2020). California has an overriding interest in deciding whether its laws protecting speech bar this suit by its chief executive.

Forum non conveniens rulings are "substantial issues" under Rule 42(b)(i), *e.g.*, *GXP Cap., LLC v. Argonaut Mfr. Servs.*, 2020 WL 4464471, at *3 (Del. Super. Aug. 3, 2020), and merit interlocutory review, *e.g.*, *Warburg, Pincus Ventures, L.P. v. Schrapper*, 774 A.2d 264, 266 (Del. 2001). To the extent review is reserved for "exceptional" cases, *GXP Cap.*, 2020 WL 4464471, at *7, this case qualifies given that the plaintiff is the chief executive of another State who is seeking to avoid limitations on libel actions that would dispose of this case in his own State's courts.

C. The Order Decides Novel Issues on California's Retraction Statute.

The Order also warrants immediate review because it erroneously ruled on novel issues under California's retraction statute.

First, the Order held for the first time that the statute does not require seeking a retraction *before* filing suit. The statute sets a deadline for seeking (and making)

a correction. Cal. Civ. Code §48a(b). It also limits a plaintiff to special damages unless he "pleads . . . notice, demand and failure to correct." *Id.* Absent those elements, or allegations of special damages, a claim is foreclosed. *See, e.g.*, *Nunes v. CNN*, 31 F.4th 135, 147 (2d Cir. 2022). Because Newsom did not plead special damages, his claim can survive *only* if he timely made a request for retraction. But he sought a correction by FedEx on the same day he sued—and it arrived three days later. D.I.14 ¶ 74; *see also* D.I.18 Ex.E 5. That was too late. By requiring a plaintiff to "plead" both a demand and failure to correct, the statute sets a sequence that requires a demand and failure to correct *before* filing. This Court, however, held for the first time ever that the statute has no such requirement. Order at 37 & n.192.

Second, the Order wrongly held that a jury could find Fox News's retraction insufficient. Watters squarely told viewers that Newsom "didn't deceive anybody on purpose. So, I'm sorry, he wasn't lying." D.I.14 ¶ 75. That retraction disavowed any suggestion that Newsom lied and thus satisfied the statute. But the Court noted that Watters also said that Newsom was "confusing and unclear" and showed a banner saying he was "sloppy." *Id.* On that basis, the Court held that a jury could find the retraction was "equivocal." Order at 38. That is a non-sequitur. Critiquing Newsom's *clarity* did not in any way detract from the disavowal of Fox News's previous suggestion that Newsom had *lied*, which was the only defamatory matter in the original broadcast. The Court's approach wrongly denies Fox News the

protection of the statute simply because Fox News engaged in *additional* speech critical of Newsom that is protected by the First Amendment.

II. The Order Meets the Criteria of Rule 42(b)(iii), and Interlocutory Review Will Promote the Most Efficient and Just Schedule to Resolve the Case.

Fox News and its counsel have determined in good faith that the Order meets the criteria of Rule 42(b)(iii). The benefits of an appeal also outweigh any costs.

First, review on any one of the rulings addressing actual malice, *forum non coveniens*, or the retraction statute "may terminate the litigation" entirely. Rule 42(b)(iii)(G). *See GXP Capital*, 2020 WL 4464471, at *5 (*forum non conveniens* rulings meet Rule 42(b)(iii)(G) because they may end litigation in this forum).

Second, review will "serve considerations of justice" under Rule 42(b)(iii)(H), because a reversal would prevent forum shopping and vindicate protections designed to ensure early dismissal of meritless libel suits by public officials. Because the expense of litigation itself chills speech, only interlocutory review can fully vindicate Fox News's First Amendment rights. Similarly, a "litigant aggrieved by denial of *forum non conveniens* relief can . . . obtain meaningful appellate review only by certification of that interlocutory order." *GXP Capital*, 2020 WL 4464471, at *5.

Third, the ruling that the California retraction statute has no timing requirement involves a "question of law resolved for the first time" under Rule 42(b)(iii)(A). Dicta in earlier cases has noted the statute makes a "plaintiff demand a correction

. . . prior to filing suit," *Bauer v. Athletic Media Co.*, 2022 WL 18586268, at *4 (C.D. Cal. Dec. 5, 2022), but no court has squarely held on that point. If a Delaware statute were being interpreted for the first time, the question would plainly warrant review under Rule 42(b)(iii)(A). *See, e.g.*, *Dambro v. Meyer*, 974 A.2d 121, 127 (Del. 2009). Review should not be denied simply because the Court reached a novel question under California law. Indeed, the question is important enough that it would merit certifying a question to the California Supreme Court.

Finally, interlocutory review provides "the most efficient and just schedule to resolve the case" and has benefits that outweigh any costs from a short delay. Rule 42(b)(iii). Because there are multiple grounds on which review could terminate the case, it makes little sense to put the parties to the expense of litigation that may end up being unnecessary. Immediate review is also necessary to vindicate the First Amendment values at stake. "[T]he Supreme Court has directed courts to expeditiously weed out unmeritorious defamation suits" at the pleading stage precisely because the expense of "[c]ostly and time-consuming defamation litigation" itself chills speech. *Kahl v. BNA, Inc.*, 856 F.3d 106, 109–10 (D.C. Cir. 2017) (Kavanaugh, J.). Fox News should not be put to the expense of defending itself against Newsom's defamation claim—nor live under the threat of his claim for $787 million in damages—when immediate review would likely result in dismissal.

WHEREFORE, the Court should certify the April 30 Order for review.

DATED: May 18, 2026

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CERTIFICATE OF SERVICE

I, Caleb G. Johnson, hereby certify that on this 18th day of May 2026, I caused to be served a true and correct copy of the foregoing **APPLICATION OF FOX NEWS NETWORK, LLC FOR CERTIFICATION OF THE COURT'S APRIL 30, 2026 ORDER FOR INTERLOCUTORY APPEAL TO THE DELAWARE SUPREME COURT** upon all counsel of record via File & Serve*Xpress*.

/s/ Caleb G. Johnson
Caleb G. Johnson (I.D. No. 6500)

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

GAVIN C. NEWSOM,	:	
Plaintiff,	:	
v.	:	C.A. No. N25C-06-251 SPL
FOX NEWS NETWORK, LLC,	:	
Defendant.	:	

[PROPOSED] ORDER GRANTING LEAVE TO APPEAL FROM APRIL 30, 2026 INTERLOCUTORY ORDER

This _____ day of _____, 2026, Defendant Fox News Network, LLC ("Fox News"), having made application under Rule 42 of the Delaware Supreme Court for an order certifying an appeal from the Court's April 30, 2026 Opinion and Order denying Fox News's motion for dismissal for failure to state a claim, ("Interlocutory Order"), and the Court having found that such Interlocutory Order determines substantial issues of material importance that merit appellate review before a final judgment and that the following criteria of Supreme Court Rule 42(b)(iii) apply:

(1) Rule 42(b)(iii)(A): the Interlocutory Order involves questions of law resolved for the first time in this State;

(2) Rule 42(b)(iii)(G): review of the Interlocutory Order may terminate the litigation; and

(3) Rule 42(b)(iii)(H): review of the Interlocutory Order will "serve considerations of justice."

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court's Interlocutory Order is hereby certified to the Supreme Court for disposition in accordance with Delaware Supreme Court Rule 42.

SO ORDERED this _____ day of _____, 2026.

_____
Sean P. Lugg, Judge

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

GAVIN C. NEWSOM, Plaintiff, v. **FOX NEWS NETWORK, LLC**, Defendant.	:	C.A. No. N25C-06-251 SPL

NOTICE OF MOTION

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant Fox News Network, LLC, by and through its undersigned counsel, will present its Application for Certification of the Court's April 30, 2026 Order for Interlocutory Appeal to the Delaware Supreme Court at the convenience of the Court.

DATED: May 18, 2026

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