

**STATE OF MICHIGAN  
IN THE 3RD CIRCUIT COURT FOR THE COUNTY OF WAYNE**

JOHN RAMSEY,

Plaintiff,

Case No. \_\_\_\_\_-CZ

v.

Hon. \_\_\_\_\_

CBS CORPORATION, CRITICAL CONTENT, LLC,  
JIM CLEMENTE, LAURA RICHARDS, A. JAMES  
KOLAR, JAMES R. FITZGERALD, STANLEY B.  
BURKE, WERNER U. SPITZ, and HENRY C. LEE,

**JURY TRIAL DEMANDED**

Defendants.

17-013731-CZ

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## COMPLAINT FOR DEFAMATION

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this Court, where it was given docket number 16-017577-CZ and was assigned to Judge David A. Groner. The action remains pending.

NOW COMES Plaintiff, John Ramsey, and states his Complaint for Defamation against Defendants CBS Corporation, Critical Content, LLC, Jim Clemente, Laura Richards, James Kolar, James R. Fitzgerald, Stanley B. Burke, Werner Spitz, and Henry C. Lee (collectively, “Defendants”), showing the Court as follows:

### INTRODUCTION

1. CBS Corporation (“CBS”) aired a four-hour documentary, *The Case of: JonBenét Ramsey*, on primetime television on September 18, 2016, and September 19, 2016 (the “Documentary”). A DVD copy of the Documentary is attached hereto as *Exhibit A* and a transcription of the Documentary made by counsel is attached hereto as *Exhibit B*, each of which are incorporated herein by reference.

2. John Ramsey (“John”) brings this defamation action to redress the permanent damage to his reputation resulting from Defendants’ false and malicious accusation in the Documentary that he engaged in a criminal cover-up in the death of his six-year-old daughter, JonBenét Ramsey (“JonBenét”), including the accusation that he strangled the remaining life out of JonBenét after finding her alive but unresponsive and brain dead on December 25, 1996.

3. Indeed, Defendants falsely and maliciously asserted that Burke Ramsey (“Burke”), John’s son, delivered a fatal blow to JonBenét’s head with a flashlight, but conceded that JonBenét was still alive when she was subsequently asphyxiated to death with a torture device known as a garrote. By falsely stating, for instance, that “as far as the cover-up itself . . .

it's John and Patsy who were involved in that," Defendants expressly and impliedly accused John of committing the final act contributing to JonBenét's death and thereafter executing a dizzying array of evasive tactics to hide his and Burke's crimes.

4. The leaps of logic glossed over by Defendants in order to make their accusations appear to be factual and plausible border on the absurd. For instance, Defendants conveyed three irreconcilable facts: (a) JonBenét would quickly die from the fatal head injuries inflicted by Burke; (b) JonBenét had no visible head trauma; and (c) JonBenét was still alive when John strangled her to death. This set of facts falsely conveyed that John found his six-year-old daughter unconscious but alive without visible injuries and then quickly devised and executed a heinous criminal plan to cover-up Burke's act by: (i) creating a garrote – a homemade torture device; (ii) strangling his daughter to death with the garrote; (iii) binding her wrists; (iv) duct taping her mouth; (v) desecrating her body; (vi) hiding and staging her remains in the basement wine cellar; (vii) knowingly contaminating the crime scene; (viii) assisting in preparing a fake ransom note; (ix) assisting in staging a fraudulent 9-1-1 call; (x) staging the discovery of JonBenét's body with police and friends present in his home; (xi) successfully lying to law enforcement and others about his and his family's involvement in the crimes for twenty years; and (xii) obstructing justice.

5. Each of the factual assertions set forth in Paragraph 4 above are false. Yet, under Defendants' false narrative, these monstrous acts came more naturally to John than calling 9-1-1 for help after finding his six-year-old daughter unconscious but without visible injuries that might possibly indicate her death was imminent.

6. The gist of *The Case of: JonBenét Ramsey* – that John covered-up Burke's crime and in doing so, contributed to causing JonBenét's death – is false and defamatory *per se*.

7. John did not kill JonBenét, did not asphyxiate her with a garrote, and otherwise had no involvement in her death and the unconscionable acts committed upon her.

8. Defendants knowingly predicated their accusations against John on a multitude of false, omitted, and misrepresented facts.

9. CBS represented and promoted *The Case of: JonBenét Ramsey* as a documentary that would reveal the truth as to who killed JonBenét Ramsey.

10. CBS represented and promoted that the Documentary would reveal the truth by presenting to viewers “new witnesses,” “new evidence,” and “new theories.”

11. CBS further represented and promoted that for the Documentary, it had assembled a highly skilled team of seven “world renowned” investigators who would conduct a “complete reinvestigation starting right from scratch,” including a re-examination of crucial evidence.

12. Defendants claimed that their Documentary and “experts” presented “one complete theory that explains everything,” that their audience would be “convinced who killed JonBenét,” and that their accusation was “supported by the evidence” after a “legitimate investigation.”

13. Defendants declared – either verbally or through imagery – their investigators’ supposed expertise on no less than ninety-six (96) occasions within the Documentary itself. The plain purpose of repeating their alleged expert credentials was to give CBS’s audience a false impression of credibility, that Defendants’ accusations were based in fact, that Defendants’ accusations and representations were truthful, and that Defendants’ accusations had been validated or established by “experts.”

14. Defendants declared that they were conducting an unbiased, complete, and legitimate investigation on at least twenty-four (24) occasions within the Documentary itself.

The plain purpose of doing so was to give CBS's audience the false impression that their accusations were based in fact and supported by the evidence developed in a trustworthy investigation.

15. Similarly, Defendant Jim Clemente ("Clemente") marketed and promoted the Documentary by declaring, "We can FINALLY tell the world the truth! Just shot an investigative docu-series about JonBenét Ramsey's death. Just Facts & TRUTH!"

16. Approximately 10.42 million people tuned in to view the Documentary on September 18th and approximately 8.24 million tuned in to watch the Documentary on September 19th, for a two-day average of 9.3 million viewers per night.

17. Because CBS labeled *The Case of: JonBenét Ramsey* a documentary and otherwise represented and promoted that the broadcast was non-fiction, Defendants' 18.66 million viewers expected a presentation of factual information about real people, places, and events that was truthful.

18. CBS perpetrated a fraud upon the public. Instead of being a documentary based on a new and legitimate investigation by a team of qualified and unbiased experts, *The Case of: JonBenét Ramsey* was a fictional crime show based primarily on a preconceived storyline scripted in the self-published and commercially unsuccessful book, *Foreign Faction*, written by Defendant James Kolar ("Kolar") and self-published in 2012.

19. Defendants' accusation that John covered-up that Burke killed JonBenét was not based on a complete investigation revealing truthful facts, new witnesses, new evidence, or new theories. Instead, Defendants consciously built their Documentary on an illegitimate and unfounded investigation, false and omitted facts, old witnesses, old evidence, and old theories.

## THE PARTIES

20. John Ramsey maintains a residence in Charlevoix, Michigan.

21. In December of 1996 and for a brief period thereafter, John and his wife Patsy Ramsey (“Patsy”) maintained a second home in Charlevoix, where the family would frequently visit on holidays and during summer months.

22. In 2002, Charlevoix became John’s residence.

23. In 2004, John unsuccessfully sought election to the Michigan House of Representatives.

24. John has no history of criminal conduct, sexual abuse, drug abuse, alcohol abuse, or any type of violent or aberrant behavior.

25. Defendant CBS is a Delaware corporation, with its principal place of business located at 51 West 52nd Street, New York, New York 10019.

26. CBS represents on its website that it “is a mass media company that creates and distributes industry-leading content across a variety of platforms to audiences around the world.” *About CBS Corporation*, <http://www.cbscorporation.com/about-cbs/> (last visited Dec. 21, 2016). CBS “has businesses with origins that date back to the dawn of the broadcasting age as well as new ventures that operate on the leading edge of media.” *Id.* CBS claims that it “owns the most-watched television network in the United States and one of the world’s largest libraries of entertainment content, making its brand – ‘the Eye’ – one of the most recognized in business.” *Id.* The company’s “operations span virtually every field of media and entertainment, including cable, publishing, radio, local TV, film, and interactive and socially responsible media.” *Id.* Through one of its subsidiaries, CBS owns and operates a television station in Detroit, Michigan – WWJ-TV.

27. In 2016, CBS reported revenues of \$13.17 billion, operating income of \$2.62 billion, and net earnings from continuing operations of \$1.55 billion. *See* <https://www.cbcorporation.com/wp-content/uploads/2017/02/CBS-Fourth-Quarter-2016-Earnings-Release.pdf> (last visited September 2, 2017).

28. Defendant Critical Content, LLC (“Critical Content”), is a California limited liability company with its principal place of business located at 1040 North Las Palmas Avenue, Building 40, Los Angeles, California 90038.

29. According to its website, “Critical Content is a leading global independent content studio.” *About Critical Content*, <http://www.criticalcontent.com/about.html> (last visited Dec. 21, 2016). Critical Content, which was “[I]aunched in October of 2015, . . . focuses on unscripted and scripted programming for broadcast, cable and digital platforms.” *Id.* The company “currently has more than 60 projects in production for more than 30 different networks.” *Id.* Critical Contents’ series include *Limitless* (CBS), *Home Free* (FOX), *Catfish* (MTV), and *The Woodsmen* (History).

30. Previously known as Relativity Television, Critical Content reemerged from a 2015 bankruptcy filing with a reported \$100 Million (\$100,000,000) in new financing and no debt.

31. Critical Content’s relationship with CBS is well-established. Tom Forman, CEO of Critical Content and Executive Producer of the Documentary, previously ran a production company called Tom Forman Productions, which produced series and pilots airing on CBS. He is a former long-time producer of CBS’s *48 Hours*. Critical Content and CBS have recently partnered on CBS’s hit series *Limitless*. *See* <http://www.criticalcontent.com/>.

32. Defendant Clemente is a resident of the State of California and played an acting role in the Documentary as one of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

33. Upon information and belief, Defendant Laura Richards (“Richards”) is a resident of California and played an acting role in the Documentary as one of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

34. Defendant James R. Fitzgerald (“Fitzgerald”) is a resident of the State of Virginia and played an acting role in the Documentary as one of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

35. Defendant Stanley B. Burke (“Stanley”) is a resident of the State of Virginia and played an acting role in the Documentary as one of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

36. Defendant Werner U. Spitz (“Spitz”) is a resident of the State of Michigan who has a place of business and conducts business in Wayne County. Spitz is a well-known television talking head who frequently interjects himself into high profile cases for self-promotion, publicity, and profit. Spitz also played an acting role in the Documentary as one of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

37. Defendant Henry C. Lee (“Lee”) is a resident of the State of Connecticut. Lee is a well-known television talking head who frequently interjects himself into high profile cases for self-promotion, publicity, and profit. Lee also played an acting role in the Documentary as one

of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

38. Defendant A. James Kolar (“Kolar”) is a resident of the State of Colorado. Since he was the author of the book heavily relied upon as a script for the Documentary, Kolar also played an acting role in the Documentary as one of the seven “world renowned” investigators who would allegedly conduct a “complete reinvestigation starting right from scratch.”

39. Kolar was a police officer who was briefly employed by the Boulder District Attorney’s Office from 2004 to the Spring of 2006.

40. Kolar was hired by then Boulder DA Mary Lacy as an experienced agency administrator to help build an investigations unit.

41. Kolar had no significant experience in criminal homicide investigations and no cold case homicide experience, but claimed that as of July 2005, he was taking the place of former lead Ramsey investigator Tom Bennett, who had retired from the Boulder DA’s Office.

42. Prior to July 2005, Kolar had never been involved in the law enforcement investigation of the murder of JonBenét Ramsey.

43. In July 2005, Kolar acknowledged that he was unfamiliar with the JonBenét Ramsey investigative files and that it would take “some period of time” to become fully acquainted with the investigative files.

44. Subsequently, Kolar requested a meeting with then Boulder DA Lacy and key members of her team and much to the surprise of the Boulder DA, announced at the meeting his theory that Burke committed the murder and John covered it up, and claimed that he had gone through the investigative files searching for any tidbit that might be used to support his theory.

45. The presentation by Kolar to members of the Boulder DA's Office of his accusation against Burke and John has been described, among other descriptive terms, as "ludicrous," "total smoke and mirrors," and "speculation based on hearsay."

46. Kolar's employment at the Boulder DA's Office ended shortly after his presentation in the Spring of 2006.

47. Kolar subsequently sought to personally profit from his rejected theory against Burke and John by writing *Foreign Faction*, which he self-published after the manuscript was rejected by traditional publishing houses.

48. Prior to 2016, Kolar also contacted several members of the mainstream media, including CBS, ABC, and NBC, seeking interviews and publicity for his book, but his promotional efforts were uniformly rejected.

### **JURISDICTION AND VENUE**

49. Defendants are subject to the jurisdiction of this Court with proper venue.

50. Defendants are subject to being sued in the State of Michigan based on the personal residence of Spitz and pursuant to the Michigan Long-Arm Statute for the other Defendants.

51. Sufficient contacts exist with respect to this action and the State of Michigan to satisfy the requirements of due process.

52. Defendants are subject to the jurisdiction of this Court pursuant to MCL § 600.705(2).

53. The Court maintains general jurisdiction over CBS and Spitz, and specific jurisdiction over all Defendants.

54. Venue is proper in this Court pursuant to MCL §§ 600.1621(a), 600.1627, and 600.1629.

55. Defendants reasonably anticipated being haled into court in Michigan to answer for the truth of their false and defamatory statements about John.

56. Defendants reasonably anticipated being haled, and have already been haled, into court in Michigan to answer for the truth of their false and defamatory statements about Burke.

57. Defendants expressly aimed their false and defamatory accusations at John, fully aware of his longstanding connections with Michigan.

58. CBS maintains an office and transacts business in Wayne County.

59. CBS has wide and regular circulation and viewership in Wayne County and Michigan.

60. Critical Content's television series have wide and regular circulation and viewership in Wayne County and Michigan.

61. CBS published the Documentary in Wayne County and throughout Michigan.

62. CBS owns, uses, and possesses real property in Wayne County.

63. Critical Content entered into an agreement with CBS to produce, market, and publish the Documentary, including in Wayne County and throughout Michigan.

64. Upon information and belief, Critical Content had an interest in the Documentary whereby it purposefully derived a benefit tied to the volume of viewership, including in Wayne County and Michigan.

65. Defendants knew and intended that the Documentary would be published throughout the CBS network, which broadcasts in Wayne County and Michigan.

66. Defendants intended that their accusations in the Documentary be published throughout the CBS network, which broadcasts in Wayne County and Michigan.

67. It was the natural and foreseeable result of the Documentary that Defendants' false and defamatory accusations against John would be published and republished in Wayne County and Michigan, causing substantial and permanent harm to John in the state.

68. Defendants knew and intended that the substantial harm from the Documentary would be caused and felt in Michigan.

69. John has suffered, is suffering, and will continue to suffer harm and original injury in Michigan from Defendants' tortious conduct in Wayne County and elsewhere.

70. CBS purposefully derived a benefit from the Documentary by broadcasting it in Wayne County and in Michigan on the station it owns, WWJ-TV. Those benefits included revenue from selling advertising for airing the show in Michigan.

71. The state of Michigan has a substantial interest in adjudicating this dispute.

## **FACTUAL ALLEGATIONS**

### **PART ONE: BACKGROUND**

72. On the night of December 25 or the early morning hours of December 26, 1996, an unknown intruder brutally tortured, sexually assaulted, and murdered JonBenét while the rest of the Ramsey family slept in their home in Boulder, Colorado.

73. For years, JonBenét's murder was the subject of a massive investigation by law enforcement officials in the State of Colorado, spearheaded by the Boulder PD and the Boulder County District Attorney's Office, with some occasional assistance from the Federal Bureau of Investigation.

74. Media coverage of the Boulder PD and DA's investigation ensued as the general public became interested in the crime.

75. With the passage of time, official investigative efforts have significantly lessened from the activity in the early years following her murder, as has media coverage of the crime.

76. Twenty years later, with the crime remaining unsolved, Defendants stole the headlines and viewership by maliciously and falsely accusing John of covering-up Burke's crime in their four-hour Documentary, which they promised would reveal JonBenét's killer.

**A. John Ramsey Has Already Been Exonerated in the Murder of His Daughter**

77. Both the judicial system and the Boulder County District Attorney's Office have previously declared John's innocence in the death of his daughter.

78. In 2003, the United States District Court for the Northern District of Georgia painstakingly analyzed the evidence of JonBenét's murder in connection with a contention that Patsy killed JonBenét. In a March 31, 2003, Order entered on a motion for summary judgment, the Honorable Julie Carnes declared that "the weight of the evidence is more consistent with a theory that an intruder murdered JonBenét[.]" *Wolf v Ramsey*, 253 F Supp 2d 1323, 1363 (ND Ga 2003) (the "Wolf Decision"). A copy of the *Wolf Decision* is attached hereto as *Exhibit C*.

79. Despite being fully aware of Judge Carnes' order, Defendants ignored and did not disclose the *Wolf Decision* during the Documentary, including many of key facts and information cited therein in support of Judge Carne's decision.

80. On April 7, 2003, former Boulder DA Mary Kennan, *n/k/a* Mary Lacy, issued a press release stating, in part, "I agree with [Judge Carnes'] conclusion that 'the weight of the evidence is more consistent with a theory that an intruder murdered JonBenét than it is with a theory that Mrs. Ramsey did so.'" A copy of said press statement is attached hereto as *Exhibit D*.

81. Despite being fully aware of the press release, Defendants ignored and did not disclose DA Lacy's April 2003 press release during the Documentary.

82. On July 9, 2008, former Boulder DA Lacy relied on newly discovered DNA evidence to officially exonerate the Ramsey family (including John) in an open letter released to the public. DA Lacy found:

[N]ew scientific evidence convinces us that it is appropriate, given the circumstances of this case, to state that we do not consider your immediate family including you, your wife, Patsy, and your son, Burke, to be under any suspicion in the commission of this crime.

...

The Bode Technology laboratory was able to develop a profile from DNA recovered from the two sides of the long johns. The previously identified profile from the crotch of the underwear worn by JonBenét at the time of the murder matched the DNA recovered from the long johns at Bode. Unexplained DNA on the victim of a crime is powerful evidence. The match of male DNA on two separate items of clothing worn by the victim at the time of the murder makes it clear to us that an unknown male handled these items.

Examples of CBS's coverage of the Lacy exoneration letter are attached hereto as *Exhibit E*.

83. Although referenced by Defendants in the Documentary, Defendants grossly misrepresented and failed to accurately disclose the basis for Boulder DA Lacy's exoneration of the Ramsey family, as more specifically detailed below, before declaring in the Documentary that the DNA evidence is "totally erroneous" and "should be ignored," and in marketing materials that the exoneration was "absurd."

**B. Burke Ramsey Has Also Been Exonerated by Law Enforcement and Courts on Numerous Occasions**

84. Defendants' accusations against John were predicated upon their accusations against Burke. Accordingly, it is necessary and prudent to examine background facts regarding

Burke – including those that Defendants consciously misrepresented and failed to disclose – with respect to both falsity and fault.

85. Burke had no involvement in JonBenét's death and did not kill his sister.

86. In addition to the *Wolf Decision*, the 2003 public statement by former Boulder DA Mary Lacy, and the 2008 exoneration of the Ramsey family by former Boulder DA Mary Lacy, Burke's lack of involvement in his sister's death has been publicly stated by numerous public officials working for the Boulder PD and Boulder DA's office, as well as by the judicial system.

87. On December 26, 1996, outside the presence of his parents and unknown to them, Burke was interviewed by Boulder PD Detective Fred Patterson, who concluded that Burke did not have any idea or knowledge about what had happened to his sister.

88. On January 8, 1997, Burke was interviewed with his parents' consent and outside of their presence by a psychologist, Dr. Suzanne Bernhard, who concluded in writing on her report to the Boulder PD that it was clear to her that Burke did not witness the murder of his sister.

89. On June 10, 11, and 12, 1998, Burke was interviewed with his parents' consent and outside of their presence by Boulder PD Detective Dan Schuler.

90. As part of the investigation, a grand jury was impaneled in September of 1998 and dismissed in the fall of 1999.

91. The Boulder PD and the Boulder DA publicly exonerated Burke before, during, and after the grand jury investigation.

92. In early 1998, former Boulder PD Chief Mark Beckner stated during a news conference that Burke was not involved in the killing of JonBenét, was not a suspect in JonBenét's murder, and was not being looked at as a suspect.

93. Despite being fully aware of his comments, Defendants ignored and did not disclose Chief Beckner's 1998 comments during the Documentary.

94. In May of 1999, former Boulder DA Alex Hunter issued a press statement that publicly and officially stated that Burke was not a suspect in connection with the murder of JonBenét. It said, in part:

[A]lmost a year ago [Boulder] Police Chief Mark Beckner stated during a news conference that Burke was not a suspect and that we are not looking at him as a possible suspect. To this day Burke Ramsey is not a suspect.

95. Former Boulder DA Hunter's May 1999 exoneration occurred approximately eight months after he convened a grand jury and approximately five months before the grand jury investigation concluded.

96. Despite being fully aware of the press release, Defendants ignored and did not disclose DA Hunter's May 1999 statements during the Documentary.

97. The Boulder DA hired Michael Kane, Esq. ("Kane"), a prosecutor from Pennsylvania, as a Special Prosecutor to oversee the grand jury investigation.

98. On or about December 12, 1999, Kane publicly acknowledged in a statement to, and published by, the Harrisburg, Pennsylvania, *Sunday Patriot News* that there was no evidence developed in the investigation that supported an accusation that Burke killed JonBenét:

One of the more horrendous mistakes by the media, Kane said, was the story by a supermarket tabloid, *The Star*, that branded Burke as the killer. Earlier this month, the Ramseys filed a \$25 million libel suit against the paper. Kane recalled that when the story first came out last May, it troubled the prosecution. And when the story began getting picked up by other newspapers, they knew they had to do something.

...

"Alex Hunter and I decided **there was no basis for that speculation and no evidence to support it**, and we issued a press release to put it to rest," Kane said, "I think it's horrible that a 12-year-old kid would have a finger pointed at him

with **no evidence to support it** and have to see his picture on the cover of tabloids every time he's in a supermarket saying that he killed his sister.”

(Emphasis added).

99. Kane's December 1999 statements occurred approximately two months after the thirteen-month grand jury investigation concluded.

100. Despite being fully aware of his comments, Defendants ignored and did not disclose Kane's December 1999 comments during the Documentary.

101. In a sworn affidavit dated October 12, 2000, former Boulder DA Alex Hunter reaffirmed under oath that Burke had never been a suspect in the investigation into his sister's murder. A copy of said affidavit is attached hereto as *Exhibit F*. The affidavit stated, in part:

From December 26, 1996, to the date of this affidavit, no evidence has ever been developed in the investigation to justify elevating Burke Ramsey's status from that of witness to suspect.

102. Despite being fully aware of his affidavit, Defendants ignored and did not disclose DA Hunter's October 2000 affidavit during the Documentary.

103. In 2003, the United States District Court for the Northern District of Georgia painstakingly analyzed the evidence of JonBenét's murder in connection with a contention that Patsy Ramsey killed JonBenét Ramsey. In a March 31, 2003, order entered on a motion for summary judgment, the Honorable Julie Carnes declared that “the weight of the evidence is more consistent with a theory that an intruder murdered JonBenét[.]” *Wolf Decision* at 1363; *see Exhibit C*.

104. Despite being fully aware of Judge Carnes' order, Defendants ignored and did not disclose the *Wolf Decision* during the Documentary.

105. CBS has, itself, many times supported Burke's innocence. Indeed, CBS has broadcast many reports regarding the exculpatory information establishing that Burke and John did not kill JonBenét. *See, e.g., Exhibit E.*

106. There was no evidence developed prior to or during the law enforcement investigation and the grand jury investigation that in any way links Burke to the killing of JonBenét or that caused the Boulder PD or the Boulder DA to consider him a suspect in the investigation of her murder.

107. Since the grand jury concluded in October 1999, and aside from law enforcement's intervening exonerations of Burke, the only new and material evidence discovered by Boulder law enforcement investigators has been the DNA evidence relied upon by former Boulder DA Lacy to exonerate the Ramsey family in 2008.

**C. Key Facts About the Murder of JonBenét and Law Enforcement's Investigation**

108. Twenty years after JonBenét's death, the perpetrator of her brutal murder has never been identified, and no indictment has ever been filed by law enforcement prosecutors against any individual in connection with her death.

109. JonBenét was six-years-old when she was brutally tortured, assaulted, and murdered. Burke was just nine-years-old.

110. JonBenét competed in beauty pageants. In 1995, she held the title of Little Miss Colorado Sunburst and on December 6, 1996, appeared in the *Lights of December Parade* at the Boulder Mall.

111. On the night of December 25, 1996, the Ramsey family attended a Christmas dinner at the home of their friends Fleet and Priscilla White.

112. After the family returned home, John and Patsy put their children to bed and went to bed themselves soon after.

113. The Ramsey family intended to rise early the following morning because they were flying to Charlevoix for a family vacation.

114. John and Patsy awoke at approximately 5:30 a.m. on the morning of December 26, 1996, to prepare for their trip to Charlevoix.

115. John and Patsy were not awakened during the night.

116. Burke was not awakened during the night.

117. Burke did not leave his bedroom during the night.

118. Shortly after waking up, Patsy went down two flights of stairs from her room to the main floor. On a step near the bottom of the stairs, she discovered a two-and-a-half-page handwritten ransom note stating that JonBenét had been kidnapped (the "Ransom Note").

119. Patsy screamed and rushed to check JonBenét's bedroom, which was empty.

120. John heard the scream and rushed to find Patsy.

121. John and Patsy checked on Burke, who appeared to them to be sleeping in his room.

122. Panicked and frightened, Patsy dialed 9-1-1 at approximately 5:52 a.m., breathlessly imploring the operator to send help (the "9-1-1 Call").

123. After she hung up with 9-1-1, Patsy telephoned family friends, who promptly came to the Ramsey home.

124. Police arrived shortly thereafter, but failed to properly secure the crime scene, a failure that seriously compromised the crime scene.

125. The Ransom Note stated that the kidnappers would call between “8 and 10 a.m. tomorrow,” but the call never came.

126. To keep John occupied, Boulder PD Detective Linda Arndt instructed him to search the home for anything unusual.

127. The Ramsey home had previously been searched by Boulder PD officers and John’s family friend, Fleet White.

128. John and Fleet White began their search in the basement.

129. John and Fleet White first searched the playroom and observed, among other things, a broken ground-level window and a suitcase beneath that window that was normally stored in a different place.

130. John eventually searched what is often called the “wine cellar” in the basement that served as a storage area (the “Wine Cellar”).

131. A Boulder PD officer had previously observed that the door to the Wine Cellar was locked from the outside and did not open the door to inspect the room. Fleet White had previously opened the door to the Wine Cellar but did not turn on the light in the room.

132. Despite prior searches by Fleet White and the Boulder PD, nobody had yet found JonBenét’s body.

133. John opened the door to the Wine Cellar, turned on the light, and discovered JonBenét’s body.

134. Duct tape covered JonBenét’s mouth, her wrists were tied above her head, and she had a garrote embedded in her neck.

135. John scooped his daughter up in his arms and carried her body upstairs, crying out for help.

136. Detective Arndt observed JonBenét's body and informed John that his daughter was dead.

137. JonBenét was strangled to death with a torture and bondage device known as a garrote.

138. The garrote was made from a nylon cord and a wooden handle fashioned from the middle of a paintbrush discovered in Patsy's paint tray in the boiler room in the basement. The end of the nylon cord was tied to this wooden handle and, on the other end, was a loop with a slipknot, with JonBenét's neck within the loop.

139. Until her autopsy, it was not visually apparent that JonBenét also suffered a massive blow to her head that fractured the right side of her skull – an injury that has been described as the equivalent to an injury resulting from a fall from the third floor of a building.

140. The pathologist performing the autopsy on JonBenét's body discovered that she was sexually assaulted by being vaginally penetrated, including penetration with the broken wooden handle of the garrote.

141. Defendant Spitz concurred during his examination in the 1990s that JonBenét was penetrated with the broken wooden handle of the garrote.

142. JonBenét's body showed many signs of a struggle with her attacker.

143. Although John and Patsy found themselves under suspicion by the Boulder PD in connection with the investigation into JonBenét's murder, the Boulder PD's focus was on Patsy.

144. During the course of the investigation, John and Patsy sought repeatedly to cooperate with investigators, including signing more than one hundred releases for information requested by the police, and providing all evidence and information in their possession requested by the police.

145. John and Patsy gave the Boulder PD historical handwriting samples and supervised written exemplars.

146. John and Patsy gave hair, including pubic hair, and DNA samples to police.

147. Burke also gave a DNA sample to the police.

148. John, Patsy, and Burke each consented to multiple interviews by law enforcement.

149. Burke was interviewed regarding JonBenét's death on at least three occasions outside the presence of his parents.

150. On December 26, 1996, John gave the Boulder PD handwriting exemplars for himself and Patsy.

151. On December 26, 1996, John voluntarily provided police with a note pad Patsy had previously used in their home. Law enforcement subsequently determined that the Ransom Note was written on that pad.

152. Law enforcement consulted six qualified and highly respected experts in the field of handwriting analysis, who performed extensive analysis of Patsy, John, and Burke's handwriting samples to the original Ransom Note.

153. All six experts conclusively eliminated John and Burke as authors of the Ransom Note.

154. None of the six experts concluded that Patsy wrote the Ransom Note. Although they could not determine with 100% certainty that Patsy did not author the Ransom Note, the handwriting experts' consensus was that the chances she wrote the Ransom Note were "very low":

During the investigation, the Boulder Police Department and Boulder County District Attorney's Office consulted at least six handwriting experts. . . . All six experts agreed that Mr. Ramsey could be eliminated as the author of the Ransom Note. None of the six consulted experts identified Mrs. Ramsey as the author of

the Ransom Note. Rather, the experts' consensus was that she "probably did not" write the Ransom Note. On a scale of one to five, with five being elimination as the author of the Ransom Note, the experts placed Mrs. Ramsey at a 4.5 or a 4.0. The experts described the chance of Mrs. Ramsey being the author of the Ransom Note as "very low."

*Wolf Decision*, 253 F. Supp. 2d at 1334; *see Exhibit C*.

155. The Ramsey home was not secure on the night of December 25, 1996. They had not turned their security alarm on, and at least seven windows and one door were found unlocked on the morning of December 26, 1996. A door from the kitchen to the outside was found open.

156. On the ground level of the Ramsey home, there was a removable grate over three windows that opened into the playroom area of the basement.

157. The center window had a broken pane.

158. Law enforcement found scuffmarks and a suitcase positioned upright beneath the center window leading to the playroom area of the basement (the "Window").

159. The area around the Window showed clear evidence of a disturbance.

160. Leaves and white Styrofoam packing peanuts that had pooled in the Window area appeared to have been cleared from, or brushed to either side of, the Window sill.

161. A shard of glass was found on the suitcase beneath the Window.

162. Green foliage was found tucked under the movable grate over the Window well.

163. Leaves and debris consistent with that found in the Window area were found on the floor of the basement underneath the Window.

164. A leaf and white Styrofoam packing peanuts like those in the Window area were found in the Wine Cellar where JonBenét Ramsey's body was found.

165. The end portion of the wooden handle and the cord used to construct the garrote were never found in the Ramsey home; i.e., the perpetrator removed these items from the home after killing JonBenét.

166. The duct tape covering JonBenét's mouth was never sourced to the Ramsey home.

167. Fiber evidence suggests that the cord and duct tape were, at one time, in the second-floor area of the home near JonBenét's bedroom.

168. Fibers consistent with those of the cord used to make the slip knots and garrote were found on JonBenét's bed.

169. Other items not belonging on the second floor of the Ramsey home were found there on the day after the murder.

170. A rope was found inside of a brown paper sack in the guest bedroom on the second floor.

171. Small pieces of the material of this brown sack were found in JonBenét's bed and in the body bag that was used to transport her body.

172. John and Patsy disclaimed ownership and knowledge of that rope.

173. An unidentified baseball bat was found on the north side of the house containing fibers consistent with fibers found in the carpet in the basement where JonBenét Ramsey's body was found.

174. Brown cotton fibers found on JonBenét's body, the garrote handle, the duct tape, and the wrist ligatures were not sourced to and do not match anything in the Ramsey home.

175. Recently-made and unidentified shoeprints containing a "HI-TEC" brand mark were found in the basement imprinted in mold growing on the basement floor.

176. Neither John, Patsy, nor Burke owned any HI-TEC brand shoes at the time of the murder.

177. The DNA of an unidentified male was found under JonBenét's fingernails.

178. The DNA found under JonBenét's nails did not match John, Patsy, or Burke's DNA.

179. The DNA of an unidentified male was found in the crotch of JonBenét's underwear.

180. The DNA found in JonBenét's underwear did not match John, Patsy, or Burke's DNA.

181. The DNA found in JonBenét's underwear was likely from saliva.

182. The DNA of an unidentified male was found on the left and right sides of the waistband of the pajama bottoms worn by JonBenét at the time of her death.

183. The DNA found on JonBenét's pajama bottoms does not match John, Patsy, or Burke's DNA.

184. The DNA found on JonBenét's pajama bottoms was touch DNA.

185. The saliva DNA found on JonBenét's underwear was consistent with the touch DNA found on JonBenét's pajama bottoms.

186. An unidentified Caucasian pubic or auxiliary hair was found on the blanket covering JonBenét's body and did not match hairs of John, Patsy, or Burke.

187. The medical examiner found the cause of JonBenét's death was asphyxia by strangulation with the garrote associated with craniocerebral trauma.

188. The medical examiner found physical evidence that conclusively established that JonBenét was alive at the time she was asphyxiated.

189. There were physical findings on her body that strongly suggested that JonBenét struggled with her attacker and was conscious at the time she was garroted.

190. JonBenét's neck had fingernail abrasions and scrapes in the area where the garrote was embedded in her neck.

191. JonBenét had burn like marks on her face and back consistent with the application of a stun gun. These marks were not present on JonBenét's face in photos taken Christmas morning.

192. The autopsy report revealed that although no head injury was visible when JonBenét's body was found, she received a severe blow to her head shortly before or after the time of her death.

193. JonBenét was sexually assaulted shortly before her death.

194. Wood fragments from the paintbrush used to create the garrote were found in JonBenét's vagina.

195. JonBenét's hymen was injured during the sexual assault, causing her to bleed onto her underwear.

196. The City of Boulder recorded the 9-1-1 Call on a recycled tape that had previously been used to record an unknown number of unrelated, prior 9-1-1 calls (the "9-1-1 Recording").

197. After Patsy hung up her wall phone from the 9-1-1 Call, the 9-1-1 Recording contains six seconds of inaudible background noise consistent with the sounds of computer keystrokes being made by the 9-1-1 operator.

198. Investigators sent the 9-1-1 Recording to the FBI and U.S. Secret Service for testing, but those agencies could not discern any conversations or voices from the background noise on the tape.

199. In 1997, Boulder PD investigators sent the 9-1-1 Recording to the Aerospace Corporation (“Aerospace”) asking its technicians to decipher the unintelligible sounds at the tail end of the 9-1-1 Call.

200. Aerospace technicians claimed they heard the following at the tail end of the 9-1-1 Recording: (a) John saying, “We’re not talking [speaking] to you”; (b) Patsy saying, “Help me, Jesus. Help me, Jesus”; and Burke saying, “[Well,] what did you find?” See, e.g., Steve Thomas, *JonBenét: Inside the Ramsey Murder Investigation* 14-15 (St. Martin’s Press 2000); *Foreign Faction*, pp. 102-103.

201. Law enforcement developed two primary theories: that an intruder killed JonBenét or Patsy killed JonBenét.

202. While under the umbrella of suspicion along with Patsy, investigators did not believe John killed his daughter after completing the initial investigation.

203. The Boulder PD officers handling the investigation had no experience in investigating homicides.

204. The Boulder DA subsequently hired the highly-respected Colorado homicide Detective Lou Smit (“Smit”) to review the case.

205. Smit concluded that JonBenét was murdered by an intruder who subdued her with a stun gun and then sexually assaulted, tortured, and brutally murdered her in the basement of the Ramseys’ home (“the Smit intruder theory”).

206. Former Boulder PD Detective Steve Thomas (“Thomas”), who was the lead detective on the case, was an undercover drug officer with zero homicide experience. Thomas was the leading public proponent of the Patsy-did-it theory, participating in media interviews and publishing a book setting forth his accusations against Patsy after he resigned from the Boulder PD. Thomas has testified that the Boulder PD theory was that Patsy accidentally struck JonBenét in a rage after discovering that she had wet her bed and thereafter staged a cover-up of her crime in which John quietly acquiesced after he discovered JonBenét’s body.

207. In June of 1998, Boulder PD presented their evidence to the Boulder DA.

208. In September of 1998, Boulder DA Alex Hunter convened a grand jury to investigate JonBenét’s death.

209. The grand jury investigation ended in October of 1999, without criminal charges or indictments being brought by the Boulder DA’s Office against any individual.

210. Following the conclusion of the grand jury investigation, Boulder DA Alex Hunter held a press conference stating that “I must report to you that I and my prosecution task force believe we do not have sufficient evidence to warrant the filing of charges against anyone who has been investigated at this time.”

211. John and Patsy strongly believe that the Boulder PD investigation was seriously flawed from the outset of the investigation through the date the investigation was taken over in December 2002 by former Boulder DA Mary Lacy with the agreement of then Boulder PD Chief Beckner.

212. In 2013, it was leaked to the media that the grand jury had voted to recommend that John and Patsy be indicted by the Boulder DA for “commit[ting] a child to be unreasonably placed in a situation which posed a threat of injury to the child’s life or health” and for

“render[ing] assistance to a person with the intent to hinder, delay and prevent the discovery, detention, apprehension, prosecution, conviction and punishment of such a person knowing the person being assisted has committed and was suspected of the crime of Murder in the First Degree and Child Abuse Resulting in Death.”

213. In the exercise of their professional and ethical duties as prosecutors, however, members of the Boulder DA’s Office did not believe that those recommended charges could be successfully prosecuted based on the evidence related to JonBenét’s death and, therefore, declined to sign any indictment.

**PART TWO: THE PRODUCTION OF *THE CASE OF: JONBENÉT RAMSEY***

214. Upon information and belief, Defendants agreed to engage in a conspiracy to defame John and Burke, and CBS and Critical Content entered into a joint venture agreement to promote, produce, and publish the Documentary.

215. The Documentary was produced and structured to support the preconceived storyline that Burke killed JonBenét and John covered it up by, among other things, strangling JonBenét with the garrote.

216. From the outset, Defendants understood and agreed that the Documentary would be intentionally produced and structured to support the accusation that Burke killed JonBenét and John covered it up before Defendants ever commenced their claimed “complete reinvestigation.”

**A. CBS, Critical Content, and the Pseudo-Experts Agree to Film and Publish the Documentary**

217. Upon information and belief, CBS originally intended to produce the Documentary in-house through its highly-respected show that specializes in true crime stories, *48 Hours*.

218. Upon information and belief, CBS abandoned its *48 Hours* production and joined forces in the late spring of 2016 with Critical Content, an outside entity, to produce the Documentary.

219. Upon information and belief, CBS's in-house broadcast standards are substantially more rigorous than the standards of Critical Content.

220. Upon information and belief, CBS decided to work with an outside production company because CBS knew that the Documentary's preconceived conclusion – that Burke killed JonBenét and John covered it up – would not pass CBS's stringent broadcast review standards.

221. Upon information and belief, CBS and Critical Content originally agreed to produce and publish a three-part, six-hour documentary, but elected on the eve of the broadcast to cut the Documentary to just two-parts for a total of four-hours.

222. Upon information and belief and unknown to the viewers of the Documentary, the third part of the Documentary examined evidence related to individuals other than members of the Ramsey family, thereby supporting the preconceived storyline that Burke and John joined together to murder JonBenét and that this accusation was the only conclusion supported by the evidence.

223. Upon information and belief, CBS and Critical Content have an agreement through which they shared resources to film and publish the Documentary.

224. Upon information and belief, CBS and Critical Content entered into a joint venture agreement whereby they agreed to jointly produce and publish the Documentary: a single project for profit.

225. Upon information and belief, CBS and Critical Content agreed to a sharing of profits as well as losses in connection with the Documentary.

226. CBS and Critical Content contributed their skills and property to the Documentary.

227. CBS and Critical Content had a community interest and control over the Documentary, including a right of joint control.

228. Clemente, Richards, Fitzgerald, Kolar, Stanley, Spitz and Lee (collectively, the “Pseudo-Experts”) were acting as CBS’s and Critical Content’s employees and/or agents during the filming and publication of the Documentary.

229. All acts and omissions of the Pseudo-Experts were undertaken in the normal course of and for the furtherance of CBS’s and Critical Content’s business, in furtherance and within the scope of CBS’s and Critical Content’s resource sharing agreement, and within the scope of their employment and/or agency relationship.

230. Defendants knowingly agreed to participate in and further the Documentary’s production and unlawful purpose of falsely accusing Burke of killing JonBenét and John of covering it up as established by their participation in the filming of the Documentary.

231. The Pseudo-Experts all knowingly agreed to appear in the Documentary as actors and to allow CBS and Critical Content to use their professional reputations and credentials to legitimize the false and defamatory accusations that Burke killed JonBenét and John covered it up by, among other things, strangling JonBenét with the garrote.

232. The Pseudo-Experts all knowingly agreed to allow CBS and Critical Content to use their professional reputations and credentials to legitimize the false portrayal of the Documentary as a “complete reinvestigation starting right from scratch.”

233. From the outset of the production of the Documentary, the Pseudo-Experts knew that the Documentary would be scripted from Kolar's self-published book and was never intended to be an independent reinvestigation of the murder.

**B. Defendants' Marketing of the Documentary**

234. CBS planned, promoted, and produced the Documentary to attract the largest number of viewers possible and then hook those viewers into watching later installments of its anticipated new true-crime series and its new fall lineup of TV shows.

235. Defendants represented and promoted that the Documentary would reveal JonBenét's killer.

236. Defendants represented and promoted that *The Case of: JonBenét Ramsey* would be a documentary that presented factual information revealing "who did what to whom and when and how."

237. Defendants represented and promoted that their team of seven "highly skilled" experts would "get to the truth about how she died" by presenting "new witnesses," "new evidence," and "new theories." See, e.g., <http://www.laurarichards.co.uk/featured/official-trailer-the-case-of-JonBenét-ramsey/>.

238. When Defendants advertised that they would present "new witnesses," Defendants' advertisement previewed their interview of 9-1-1 operator Kim Archuletta.

239. Ms. Archuletta's interview in the Documentary is nearly identical to her interview with Kolar, which he published in *Foreign Faction* in 2012. See *Foreign Faction*, p 100.

240. Kim Archuletta was not a "new witness."

241. Defendants knew Ms. Archuletta was not a "new witness."

242. When Defendants advertised that they would present “new evidence,” Defendants’ advertisement shows their purported enhancement of the 9-1-1 Call.

243. In 1997, Aerospace purportedly enhanced the 9-1-1 Recording and published a transcript virtually identical to the transcript in the Documentary. Aerospace’s 1997 transcript was published in the supermarket tabloids in 1998, by Steve Thomas in 2000, and Kolar in 2012. *See, e.g., JonBenét: Inside the Ramsey Murder Investigation*, pp. 14-15; *Foreign Faction*, pp. 101-102. These “transcripts” have always been the subject of great dispute, with their accuracy being denied by members of Boulder law enforcement investigating the case and by John, Patsy, and Burke.

244. The purported analysis of the 9-1-1 Recording was not “new evidence” and was not the result of any advancements in technology: the analysis was performed in 1997.

245. Defendants knew the supposed 9-1-1 Recording was not “new evidence.”

246. When Defendants advertised that they would present “new theories,” Defendants’ advertisement shows a purported cobweb demonstration in the basement Window.

247. The Documentary’s cobweb theory and demonstration was not a “new theory,” as it was also taken directly from Kolar’s book, *Foreign Faction*. *See Foreign Faction*, pp. 234-239.

248. Defendants knew that the cobweb was not a “new theory.”

249. Clemente promoted the Documentary as fact, its theory as conclusive, and the case as resolved.

250. Clemente stated as follows on his Twitter account: “We can FINALLY tell the world the truth! Just shot an investigative docu-series about JonBenét Ramsey’s death. Just Facts & TRUTH!” *See*, in addition to other media republications of this statement,

[https://twitter.com/JimClemente/status/763514815524372481?ref\\_src=twsrc%5Etfw&ref\\_url=https%3A%2F%2Fwww.romper.com%2Fp%2Fwho-is-jim-clemente-on-the-case-of-jonbenet-ramsey-he-could-have-insight-into-the-case-16899](https://twitter.com/JimClemente/status/763514815524372481?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fwww.romper.com%2Fp%2Fwho-is-jim-clemente-on-the-case-of-jonbenet-ramsey-he-could-have-insight-into-the-case-16899).

251. Clemente made the following claims published by *The Sydney Morning Herald*:

It explains who did what to whom and when and how.

That's why the case was inconclusive until today.

Cold case homicide investigations many times are at an advantage. People wouldn't talk before and now they'd talk to us. Technology has advanced. Criminal behavioral analysis has advanced. All these things coming together helped us find new evidence and helped us better understand the evidence from before. Our team got together, we argued it out, and we came up with one comprehensive theory.

Hopefully that documentary will build enough groundswell support to get the District Attorney's office to resolve the case.

See <http://www.smh.com.au/entertainment/tv-and-radio/JonBenét-ramsey-docuseries-will-name-new-suspect-says-retired-fbi-agent-jim-clemente-20160919-grjj11.html>.

252. Clemente made the following claims published by *Mirror*: “We all came to one complete theory that explains everything that happened,” and “[t]he world has heard so many false rumors. The people of the community need to know the truth so they can put pressure on the district attorney.” See <http://www.mirror.co.uk/tv/tv-news/JonBenét-ramsey-theory-explains-everything-8867093>.

253. Clemente also claimed on a CBS interview that “we are confident that the team of experts we put together will move this case forward so that there will be justice for JonBenét,” and “if you watch the show . . . we have some very strong conclusions about what happened that day to JonBenét Ramsey.” See <http://amp.cbslocal.com/video/category/interviews/3504304-jim-clemente-tom-forman-discuss-JonBenét-ramsey-docuseries/>.

254. In the same interview, Tom Forman promoted the Documentary's team of independent experts and their purported independent yet identical conclusion:

[A] team of the best investigators in the world – it's Henry Lee and Werner Spitz, these guys are world-class at what they do – spent the summer reinvestigating this case, and independently, each one of them reaches the same conclusion: that there is only one way this could have gone down.

255. When Fitzgerald was promoting the Documentary, he proclaimed “we solved it.”

See <http://www.eonline.com/news/795944/the-case-of-JonBenét-ramsey-will-solve-the-murder-but-no-one-will-be-arrested-here-s-why>.

256. According to Fitzgerald, “[y]ou will learn a lot and you will be, I'm pretty sure, convinced who killed JonBenét Ramsey.” *Originally published at*

<http://highlighthollywood.com/2016/10/burke-ramsey-sues-werner-spitz-for-150m-following-outrageous-JonBenét-death-accusations/>.

257. While Richards was promoting the Documentary, she stated that they “tested every hypothesis.” See <http://extratv.com/videos/0-98uf19sb/>.

**C. Defendants Based the Documentary on *Foreign Faction***

258. *Foreign Faction* was the primary source for Defendants' script.

259. A copy of *Foreign Faction* can be seen thoroughly tabbed on various occasions in the Documentary, particularly when Clemente, the leader of the Pseudo-Experts, is in the frame.

260. Defendants' fraud on the viewers kicks off in the first three minutes of the Documentary when Clemente proclaims, “what we need to do is a complete reinvestigation starting right from scratch.” At that exact moment, the television frame shows a copy of Kolar's *Foreign Faction* on the war room table – unintentionally but accurately revealing the script for the preconceived storyline of the Documentary. A copy of this television frame showing *Foreign Faction* is attached hereto as *Exhibit G*.

261. Rather than conducting a “complete reinvestigation starting right from scratch,” Pseudo-Expert Clemente made thorough notes on Pseudo-Expert’s Kolar purported investigation that was the basis of his self-published 2012 book, *Foreign Faction*.

262. Contrary to their representations to the public, Defendants did not present an actual Documentary and did not conduct a “complete reinvestigation starting right from scratch” based on true facts, “new witnesses,” “new evidence,” and “new theories.”

263. Defendants merely presented the sensational and rejected accusations of *Foreign Faction* and the long ago legally rejected accusations of the supermarket tabloids.

264. The sting of Defendants’ Documentary and the allegations supporting that sting were largely lifted straight from *Foreign Faction*, in which Kolar praised the assistance provided by his legal counsel, Thomas B. Kelley, of the firm of Levine Sullivan Koch & Schultz.

265. Mr. Kelley served as co-counsel for Globe International, Inc. and Globe Communications, Corp. in the successful libel litigation brought on behalf of Burke arising out of the November 1998 supermarket tabloid accusations against Burke that were strikingly similar to the accusations published in *Foreign Faction* and the Documentary.

266. Defendants knew that *Foreign Faction* was the basis for the Documentary but failed to disclose that fact to the public as it would have detracted from the compelling but false storyline that the Documentary was a complete reinvestigation by new experts presenting new theories based upon new evidence and new witnesses.

267. Defendants knew that the majority of the falsehoods, half-truths, material witnesses, and theories presented in the Documentary were taken from *Foreign Faction* and did not, as represented to the public, result from a complete reinvestigation by new experts.

268. CBS knew that a Documentary rehashing a stale and rejected theory set forth in a commercially unsuccessful and self-published book would not capture the public's imagination and produce the ratings and profits sought by CBS. CBS needed the public to buy into the idea that the well-trodden Ramsey case was about to be blown wide open with JonBenét's killer being publicly revealed by a new reinvestigation, which would solve the twenty-year-old murder mystery.

269. To accomplish their goals of achieving ratings and profits, Defendants produced the Documentary to make the false accusations of *Foreign Faction* appear to be real.

270. Defendants created the illusion of a new, authentic, and real-time reinvestigation by using individuals with law enforcement credentials as actors to play the role of the Pseudo-Experts and support and act out the accusations of Kolar's book and the basis supporting its accusations.

271. Defendants falsely marketed, promoted, and portrayed Clemente, Richards, Fitzgerald, Kolar, Spitz, and Lee as "independent" experts who were coming together for the first time in the Documentary and who independently reached the same conclusion.

272. In fact, Kolar had discussed his rejected theory with Fitzgerald and the FBI's Behavioral Analysis Unit as early as 2006.

273. Fitzgerald, Clemente, and Stanley all previously worked for the FBI's Behavioral Analysis Unit.

274. Upon information and belief, Fitzgerald had discussed Kolar's theory with Richards, and Richards agreed to join a team to review the Ransom Note prior to Richards "putting together this elite and renowned team."

275. Upon information and belief, Kolar had discussed his theory and Spitz's flashlight theory with Spitz prior to Richards "putting together this elite and renowned team."

276. Kolar relied extensively on Spitz and Lee in writing *Foreign Faction*.

277. Defendants knew, before undertaking any purported "complete reinvestigation," that Kolar would accuse Burke of killing JonBenét and John of covering it up.

278. Defendants hired Clemente, Richards, Fitzgerald, Stanley, Spitz, and Lee because they were familiar with and/or collaborated on various aspects of Kolar's "Burke-did-it" explanation, well in advance of the Documentary and its purported "complete reinvestigation."

279. Defendants hired Fitzgerald, Clemente, and Richards because Defendants knew, before conducting any "complete reinvestigation," that they would accuse Burke of killing JonBenét and John of covering it up.

280. Defendants hired Spitz and Lee because Kolar had previously relied on their theories to support his false accusation against Burke.

281. According to *Foreign Faction*, Kolar had spoken on many occasions with the FBI's Behavioral Analysis Unit, and Fitzgerald in particular, regarding his Burke-did-it-theory between 2006 and 2012. *See Foreign Faction*, pp. 364-367.

282. And according to Kolar, "Fitzgerald was very interested in [Kolar's] theory," "wanted to know if [Kolar would] be willing to come to Quantico to share it with members of his team," "[Fitzgerald] offer[ed] to put together a small team of forensic linguistic experts from around the nation to take another objective look at the ransom note," and that "[o]ne of his peers from the United Kingdom had volunteered to participate as well." *Id.* at 366-367.

283. Upon information and belief, Fitzgerald's purported team of forensic linguistic experts included Clemente, Richards, and Stanley.

284. Kolar even wrote a letter dated January 1, 2007, to Colorado Governor Bill Owens requesting that “consideration be given to inviting the FBI’s Behavioral Analysis Unit to participate in the examination of this new evidence and case theory.” *Id.* at 380-381.

285. Clemente, Fitzgerald, and Stanley are former co-workers.

286. Clemente, Fitzgerald, and Richards are current co-workers. The three of them are key employees at a production company called X-G Productions LA, Inc. (“X-G Productions”).

287. X-G Productions consults on and produces fictional crime films and TV shows. See <http://www.xgproductions.com/>.

288. X-G Productions’ slogan is “authenticity.” *Id.*

289. X-G Productions’ expertise is to portray fictional crime stories to make them appear real to television and movie viewers.

290. X-G Productions works on an array of fictional crime shows and movies, including Criminal Minds, Blindspot, Quantico, Sleepy Hollow, NCIS, The Americans, Person of Interest, True Detective, Smokin’ Aces 2 Assassins’ Ball, The Closer, and King & Maxwell.

291. X-G Productions also employs Aliza Rosen (“Rosen”) as its Chief Content Officer.

292. The Documentary credits Clemente, Richards, and Rosen for its “Concept” and as its Co-Executive Producers.

293. Prior to the commencement of the phony reinvestigation, Defendants had their “concept” and the seven so-called “independent experts” who had agreed to act out *Foreign Faction* under the guise of engaging in a legitimate reinvestigation: one “expert” who was the only person connected in any manner to the investigation to have suggested that Burke was the killer; one “expert” who was an FBI linguist known to have consulted on and supported Kolar’s

theory for years; three “experts” who were the linguist’s past and current co-workers with whom he shared Kolar’s theory; and two “experts” relied on by Kolar to support his theory.

294. Defendants’ promotions and representations concerning the new, complete reinvestigation that would reveal the killer were hugely successful, as Defendants’ accusation against Burke and John was a worldwide shout of guilty by CBS – the Tiffany Network. The media, in headline after headline, article after article, and social media post after social media post repeated and republished the CBS shout of guilty: **CBS says Burke killed JonBenét and her parents covered it up.**

295. No longer were the false accusations against Burke and John emanating from the netherworld of Ramsey conspiracy theorists or from the pages of the supermarket tabloids or from the pages of a self-published book rejected by law enforcement and the mainstream media. Now CBS – the most respected name in broadcast news and the network of Murrow, Cronkite, and Wallace – placed the full power and credibility of its brand and its reputation for integrity solidly behind the accusation that Burke killed his sister and John covered it up by, among other things, strangling his daughter to death.

### **PART THREE: THE BROADCAST OF *THE CASE OF: JONBENÉT RAMSEY***

#### **A. Defendants and Their Purported Fields of Expertise**

296. At the beginning of the Documentary, Defendants introduced their team of so-called “world renowned” “experts”: Clemente, Richards, Fitzgerald, Kolar, Stanley, Spitz, and Lee – i.e., the Pseudo-Experts.

297. The Documentary described Clemente as, among other things, a “Retired FBI Profiler,” an “expert in the areas of child sex crimes, child abductions, and child homicides,” and a former member of “the FBI’s Behavioral Analysis Unit.”

298. Clemente currently works for X-G Productions as a writer and co-producer of fictional crime series and films.

299. The Documentary did not disclose Clemente's connection to X-G Productions.

300. The Documentary described Richards as a "Criminal Behavioral Analyst" "trained by New Scotland Yard and the FBI."

301. Richards currently works for X-G Productions as a co-producer of fictional crime series and films.

302. The Documentary did not disclose Richards' connection to X-G Productions and Clemente.

303. The Documentary describes Fitzgerald as a "Profiler," "Forensic Linguist," and "a former police officer too."

304. Like Clemente, Fitzgerald was also a member of the FBI's Behavioral Analysis Unit.

305. Fitzgerald currently works for X-G Productions as a co-producer of fictional crime series and films.

306. The Documentary did not disclose that Fitzgerald worked for the FBI's Behavioral Analysis Unit, his connection to X-G Productions, or his connections to Clemente and Richards.

307. Stanley was also a member of the FBI's Behavioral Analysis Unit.

308. The Documentary did not disclose that Stanley was a member of the FBI's Behavioral Analysis Unit or his connection to Clemente and Fitzgerald.

309. The Documentary described Kolar as an "Investigator for the Boulder D.A." and "Chief of Telluride Marshall's Department."

310. According to his book, Kolar became familiar with the FBI's Behavioral Analysis Unit and Fitzgerald while corresponding with the FBI's Behavioral Analysis Unit regarding his Burke-did-it theory.

311. The Documentary did not disclose that Kolar authored *Foreign Faction* or his connections to the FBI's Behavioral Analysis Unit and Fitzgerald.

312. The Documentary described Spitz as a "Forensic Pathologist" who consulted on the "JFK Autopsy" and "MLK Assassination."

313. Federal judges have referred to Spitz as "not useful or credible," and his opinions as "simplistic and preposterous." Spitz once provided dubious testimony about a man's cause of death to support his paying client, even though his testimony explicitly contradicted his own treatise.

314. Kolar relied heavily on Spitz to support his theory in *Foreign Faction*.

315. Spitz has a long history of using his résumé to interject himself into high profile cases for money and publicity.

316. The Documentary described Lee as a "world renowned criminalist," "Forensic Scientist," and a "Pathologist."

317. Kolar relied heavily on Lee to support his theory in *Foreign Faction*.

318. Lee has a long history of using his résumé to interject himself into high profile cases for money and publicity.

319. The Documentary did not disclose that Kolar relied on Spitz and Lee in his book, *Foreign Faction*.

320. Despite these connections, Defendants consciously conveyed to the viewers that these seven “experts” were independent and came together to conduct a complete and legitimate investigation – the first of its kind.

**B. The False, Defamatory, and Malicious Gist of the Documentary**

321. The false and defamatory gist of Defendants’ Documentary was that Burke delivered a fatal blow to JonBenét, but before she died John strangled her to death with a torture device known as a garrote to cover-up for Burke. The false and defamatory gist is further that John and Burke participated in a criminal cover-up of the crime, lying to the police and the public about their involvement to this day.

322. Defendants negligently published the Documentary and negligently published the accusation that John strangled JonBenét to death and otherwise participated in a criminal cover-up on behalf of Burke.

323. Prior to publishing the Documentary and the accusation against John, Defendants had actual knowledge that neither John nor Burke killed JonBenét or they published their accusation with a reckless disregard for the truth.

324. Defendants made their false accusation against John and Burke with actual malice, in that Defendants predetermined the result of their Documentary, but nevertheless portrayed the Documentary as being a “complete reinvestigation” featuring “new witnesses,” “new evidence,” and “new theories.”

325. Defendants made their false accusation against John and Burke with actual malice, in that Defendants preselected their team of Pseudo-Experts because they had robust preexisting connections with each other, but were willing to be marketed and falsely portrayed as independent.

326. Defendants made their false accusation against John and Burke with actual malice, in that Defendants knew their team of Pseudo-Experts would portray John and Burke as guilty before conducting a “complete reinvestigation,” but marketed and portrayed that their Pseudo-Experts “independently . . . reache[d] the same conclusion[.]”

327. Defendants supported their accusation with a web of statements, re-creations, and images, most of which were knowingly false, misrepresentative, and/or omitted and ignored accurate information.

328. The purpose of the Documentary was to generate ratings and profits at the expense of permanently impugning the reputations of John and Burke, evidencing a wanton, reckless, and malicious disregard for the damage to John and Burke that was entirely foreseeable.

329. Defendants failed to meaningfully investigate, and recklessly dismissed, evidence that supported explanations for JonBenét’s death other than the conclusion that John and Burke were guilty.

330. Defendants’ version of events is so improbable on its face that Defendants necessarily acted with a reckless disregard for truth or falsity in publishing it.

331. When Defendants published the Documentary, there were obvious reasons to seriously doubt the truth and credibility of any accusation that Burke killed JonBenét and John covered it up, and those reasons were easily ascertainable by Defendants, as they were part of the public record related to the murder investigation.

332. When Defendants published the Documentary, they knew that there was no direct evidence ever developed that supported an accusation that Burke killed JonBenét and John covered it up.

333. When Defendants published the Documentary, they knew that their accusation that Burke killed JonBenét and John covered it up had no basis in fact.

334. When Defendants published the Documentary, they had actual knowledge that for almost two decades CBS had discussed and reported on information and evidence that exonerated Burke, necessarily exonerating John for covering up Burke's alleged crime.

335. In publishing the Documentary, Defendants purposefully avoided and ignored the overwhelming evidence that established that Burke did not kill his sister and John did not cover up such a killing.

336. CBS's strategy for purposefully avoiding and ignoring the truth included using a third-party production company, in a misguided effort to try and legally insulate itself from the overwhelming evidence that John did not cover-up that Burke killed JonBenét, and its direct involvement in the conscious, intentional manipulation and misrepresentation of information in the Documentary undertaken to support the false accusation against John.

337. CBS's use of a third-party production company – instead of an in-house team such as *48 Hours* or *60 Minutes* – was contrary to its usual practice in discussing and investigating true crime stories and was motivated by CBS's desire to avoid the truth and insulate itself from the falsity of its accusations, thus evidencing a reckless disregard for truth or falsity.

338. Upon information and belief, CBS, by and through its CEO Leslie Moonves and Glenn Geller, President of CBS Entertainment, was presented an opportunity by a trusted and well-respected member of the media to review prior to airing the Documentary, a large notebook containing the mountain of exculpatory information regarding Burke – an offer they declined.

339. When Defendants published the Documentary, they acted with a reckless disregard for the truth in accusing John of covering up that Burke killed JonBenét in the face of verifiable denials by John, Burke, the Ramsey family, and numerous law enforcement officials who have steadfastly professed John and Burke's innocence for over 18 years.

340. When Defendants published the Documentary, they acted with a reckless disregard for the truth of the accusation that John covered-up that Burke killed JonBenét by failing to verify and investigate the serious charge it was levying against him.

341. Indeed, because the accusation that John covered-up that Burke killed JonBenét was not "hot news" – i.e., Defendants did not publish information that must be communicated immediately to prevent it from losing its newsworthiness – Defendants acted with a reckless disregard for the truth by conducting a phony investigation (or no investigation at all) that was grossly inadequate under the circumstances.

342. When Defendants published the Documentary, CBS acted with a reckless disregard for the truth of the accusation that John covered-up that Burke killed JonBenét by relying on Critical Content. Critical Content is in the business of fiction and "reality" television, rather than the business of conducting legitimate criminal investigations into twenty-year-old murders that have remained unsolved despite unparalleled scrutiny by law enforcement and investigative journalists.

343. When Defendants published the Documentary, they acted with a reckless disregard for the truth of the accusation that John covered-up that Burke killed JonBenét, because they hired "experts" who were essentially "TV talking heads" with dubious experience, independence, and reputation, who were not reliable, unbiased sources or experienced homicide investigators.

344. When Defendants published the Documentary, CBS and Critical Content acted with a reckless disregard for the truth of the accusation that John covered-up that Burke killed JonBenét by relying on Clemente, Richards, and Fitzgerald, whose current occupations are to make fake crime appear real on TV.

345. When Defendants published the Documentary, CBS and Critical Content acted with a reckless disregard for the truth of the accusation that John covered-up that Burke killed JonBenét by relying on Kolar and his self-published book *Foreign Faction*. Kolar's Burke-did-it accusation had been widely rejected by the many public officials and members of the mainstream media to whom he shopped it, in large part because it was a nonsensical and unsupported accusation against an innocent young man based on lies and rampant speculation.

346. The egregious nature of Defendants' conduct is conclusively established by the fact that Defendants sought to hide their reliance on *Foreign Faction* from the public and the viewers of the Documentary – the book is not mentioned in the Documentary or its credits.

347. When Defendants published the Documentary, they acted with a reckless disregard for the truth because they knew that the Documentary was not a complete reinvestigation that uncovered new evidence that could implicate John or Burke; nevertheless, Defendants knowingly published the accusation that John covered-up that Burke killed JonBenét, which contradicted the law enforcement findings that CBS had long reported.

348. When Defendants published the Documentary, they acted with a reckless disregard for the truth, because they premised their accusations on factual assertions that were false, contrary to established evidence, and, in some cases, contrary to prior assertions made by their own Pseudo-Experts when they were briefly involved in the actual law enforcement investigation of JonBenét's murder.

349. When Defendants published the Documentary, they knowingly based their accusation against John and Burke on false assertions of fact.

350. When Defendants published the Documentary, they acted with a reckless disregard for the truth, because they knowingly omitted from the Documentary and recklessly ignored exculpatory information that definitively establishes John and Burke's innocence.

351. When Defendants published the Documentary, they had actual knowledge that because the actual evidence did not support the accusation that John covered-up that Burke killed JonBenét, the Documentary grossly manipulated, misrepresented, and distorted information and juxta-positioned certain statements to intentionally create and support the false gist of the Documentary.

352. When Defendants published the Documentary, they knowingly manipulated and distorted the results of the Documentary's demonstrations and re-creations to lend unwarranted support to their false accusation that John covered-up that Burke killed JonBenét.

353. Upon information and belief, when Kolar self-published *Foreign Faction*, he sought out *48 Hours* to promote his book, but *48 Hours* declined to even interview him, rejecting his book's conclusion as absurd and not worthy of belief based on known evidence and information about the case.

354. After the Documentary was broadcast, John promptly demanded that Defendants retract and correct the Documentary, including the false and defamatory conclusion, gist, and implication that John covered-up that Burke killed JonBenét. John further described and demanded retraction of various specific false and defamatory statements, as well as other statements the Documentary juxta-positioned to support the false and defamatory gist that John

covered-up that Burke killed JonBenét. Copies of the retraction demands delivered to Defendants are attached hereto as *Exhibits H and I*.

355. Defendants refused to retract the false and defamatory gist and implication of the Documentary, as well as the many specific statements creating and supporting the false gist.

356. Defendants' refusal to retract the accusation that John covered-up that Burke killed JonBenét, despite being put on notice that it was false and defamatory, also evidenced their reckless disregard for the truth.

357. Defendants' ultimate conclusion, implication, and gist – that John covered-up that Burke killed JonBenét – is comprised of several false, misrepresented, omitted, and defamatory factual assertions predesigned to bolster their accusations against John and Burke.

358. Nearly every segment, every statement, and every image in the Documentary is a building block designed and juxta-positioned to convince Defendants' audience that Burke killed JonBenét and John covered it up.

**C. Defendants' False and Defamatory Conclusion that John Covered-up that Burke Killed JonBenét**

359. The segment of the Documentary analyzed in this section of the Complaint is found at page 77 and through page 84 (the end) of the script attached hereto as *Exhibit B*.

360. After engaging in rank speculation, junk science, confirmation bias, consciously skewing the facts at every opportunity to implicate John and Burke, and combining suggestive juxtapositions alongside false and omitted facts, Defendants concluded their Documentary by clearly and falsely accusing John of the following:

- a. Finding JonBenét alive but unresponsive shortly after Burke delivered a fatal blow to JonBenét's head with a flashlight and electing to engage in a criminal cover-up rather than call 9-1-1 for help;

- b. Conspiring with Patsy to devise and execute a criminal cover-up of JonBenét's death;
- c. Making a strangulation and torture device known as a garrote to use to strangle JonBenét for the purpose of staging her murder as having been done by an intruder;
- d. Strangling JonBenét to death while still alive and without any visible head trauma;
- e. Restraining JonBenét's limbs with rope;
- f. Duct taping JonBenét's mouth closed;
- g. Staging JonBenét's remains in the Wine Cellar;
- h. Participating in the preparation of the Ransom Note;
- i. Participating in the fraudulent and staged 9-1-1 Call;
- j. Contriving to discover JonBenét's dead body while in the company of friends;
- k. Intentionally contaminating the crime scene;
- l. Lying to police, prosecutors, the media, friends, and family; and
- m. Obstructing justice for twenty years thereafter.

361. John did not perform any of the heinous criminal acts set forth in the above Paragraph, nor did he have any other involvement in JonBenét's death.

362. Defendants conveyed their above conclusions through, among other statements and images, the following false and defamatory statements:

- a. Then John came upstairs and apparently Detective Arndt asked him to search the house from "top to bottom." So, again, John went down to the basement with Fleet White. He went into the wine cellar. Clemente, *Exhibit B*, p. 78.
- b. In my view, this would have been so easy to figure out if they had not used lawyers who shut the door to any additional investigation. Spitz, *Exhibit B*, p. 78.

- c. Yeah, I believe the Ramseys distanced themselves from the investigation while at the same time claiming to the world through media appearances that they were fully cooperating. Clemente, *Exhibit B*, p. 79.
- d. No, I don't believe that it was somebody from the outside. Spitz, *Exhibit B*, p. 79.
- e. I don't think the evidence that stands up to scientific or behavioral scrutiny indicates that somebody came in from outside that home and killed JonBenét. Clemente, *Exhibit B*, p. 80.
- f. And, of course, you know, the media is speculating on a pedophile or a sex offender. Dr. Lee said that the DNA evidence in this case is totally erroneous. Richards, *Exhibit B*, p. 80.
- g. That DNA has no forensic value. It's really no sexual assault here. Lee, *Exhibit B*, p. 80.
- h. I don't think so, either. But I think what we do find though is an intent to mislead [and] an intent to cover-up. Clemente, *Exhibit B*, p. 82.
- i. I think early on we discussed the lack of the family actually getting involved with the investigation to begin with. And that is so atypical of what I see in a case where someone close to you have passed away. You'll do whatever you can to get the case resolved. We didn't see that here . . . but maybe we did. Maybe we saw it with her brother. "Do everything we can to protect this child." We see it in the letter. It's a sales job, trying to take the cops down a certain avenue. And we see it in the press conferences. . . . Every step along the way we see it. Stanley, *Exhibit B*, p. 82.
- j. Mixed motives make it pretty clear that both parents are involved. Kolar, *Exhibit B*, p. 82.
- k. Yeah, I mean, I think from a profiling perspective, mixed motives tells us that it's a high probability that it's more than one person involved in staging, right? Clemente, *Exhibit B*, p. 82.
- l. Arguably, yes, and that's been the experience that we've had looking at staged crime scenes over the years. And I think that's what we have here in the language utilized [in the Ransom Note, 9-1-1 Call, and press conferences], as well as the crime scene itself, the body and everything else. Within an hour of this crime being committed, there's probably a cover-up starting with whatever they did to the body and certainly the writing of this letter, the 9-1-1 call, everything that happened later. But I don't think Burke was involved in the cover-up. He was not directly involved in writing letters. He certainly didn't do the phone call to 9-1-1. He may have been there in the room as we found out later. . . Now was he

interviewed later on by investigators and child psychological experts and did he perhaps say some things that perhaps were not exactly true that happened that night, that's very possible. . . But as far as the cover-up itself, I would say, primarily, it's John and Patsy who were involved in that. Fitzgerald, *Exhibit B*, pp. 82-83.

- m. I think the most likely probability is that the adults in that family, John and Patsy Ramsey – and this is consistent with what the grand jury wanted to indict them for – staged this to look like a monster predator had come in their house and killed their daughter. It's my opinion that the Ramsey family did not want law enforcement to resolve this case and that's why it remains unsolved. Clemente, *Exhibit B*, p. 83.
- n. 100% agree. Fitzgerald, *Exhibit B*, p. 83.
- o. In the 20 years since this horrendous death, I have no doubt someone involved in this homicide talked to someone about what happened and I would only hope at some point the persons who may have heard something from John Ramsey, from Burke Ramsey, and perhaps the late Patsy Ramsey, would still come forth. I'd love to hear from them. Fitzgerald, *Exhibit B*, p. 83.
- p. I think in the end this was about two parents [who] deeply cared for the daughter they lost and wanted to protect the child they had remaining. Clemente, *Exhibit B*, p. 84.

363. Each of the above statements, individually in context and together in combination, conveyed the false and defamatory accusation that John engaged in a criminal cover-up on behalf of Burke, including the criminal act of strangling the remaining life out of JonBenét.

364. Defendants also used fictional recreations and audio depicting their accusations to bolster the defamatory and factual impression of their conclusions.

365. Defendants published their above accusations despite knowledge of their falsity or with reckless disregard for their falsity.

366. Even had Defendants not offered such a clear accusation at the end of their Documentary, the Documentary would nonetheless have been defamatory and would nonetheless have falsely conveyed that John engaged in a criminal cover-up that included the criminal act of strangling the remaining life out of JonBenét.

367. In addition to the statements identified above, and countless false and material facts, Defendants further utilized throughout the broadcast a number of suggestive juxtapositions and other statements designed to support their preconceived storyline that John engaged in a criminal cover-up on behalf of Burke.

368. As a predicate for their false accusation against John, Defendants falsely concluded that Burke killed JonBenét with a flashlight, thereby giving John motive for engaging in a criminal cover-up:

- a. My hypothesis was that I think the Ramseys came home around 9:30, 10:00 o'clock. I think JonBenét was asleep. I think John did carry her upstairs. Patsy remained downstairs with Burke and served him the tea and the pineapple. I think that accounts for the physical evidence as well as the latent prints. Then I think she got JonBenét up to make sure she used the toilet so she didn't wet the bed that night. JonBenét was up, she may or may not have brushed her teeth. That stuff was out on the counter. And then I think she was up and awake enough, but she maybe was still hungry and went downstairs. In the meantime, Patsy continued packing for the Michigan trip. I think if Burke was upset about circumstances or Christmas presents, he probably would've been upset about her trying to snag a piece of pineapple. Out of anger he may have struck her with that flashlight. Kolar, *Exhibit B*, p. 80.
- b. I think we all agree on that. Spitz, *Exhibit B*, p. 80.
- c. Yeah. Clemente, *Exhibit B*, p. 80.
- d. Yes. Fitzgerald, *Exhibit B*, p. 80.
- e. Absolutely. Richards, *Exhibit B*, p. 80.
- f. Sure, yeah, I agree with that. Lee, *Exhibit B*, p. 80.
- g. Okay. Spitz, *Exhibit B*, p. 80.
- h. However, I think it's not the intentional murder. Lee, *Exhibit B*, p. 80.
- i. Maybe in anger he swung it faster than he thought it would. We're talking about a ten-year-old, who, by the way, had hit the same person in the head with a golf club and what happened? Clemente, *Exhibit B*, p. 81.
- j. Nothing happened. Spitz, *Exhibit B*, p. 81.

- k. Nothing happened, so . . . Clemente, *Exhibit B*, p. 81.
  - l. Yeah, because he didn't hit that with that same force that he used the flashlight. Spitz, *Exhibit B*, p. 81.
  - m. Let's say, "Don't steal my pineapple!" [with accompanying physical demonstration]. Lee, *Exhibit B*, p. 81.
  - n. Maybe it comes down to what accident means to you. For me, legally, what an accident means is if somebody who did not form the intent to kill . . . Clemente, *Exhibit B*, p. 81.
  - o. But still hits you with a lot of impact. Spitz, *Exhibit B*, p. 81.
  - p. That could be a fact, but what you don't know is what's going in on his head. Clemente, *Exhibit B*, p. 81.
369. As more fully set forth herein, Burke did not kill JonBenét.

370. Each of the below sections examines the false and defamatory factual assertions, conclusions, and suggestive juxtapositions on which Defendants' accusation against John is based.

**D. Defendants Falsely Convey that New Evidence Establishes that Burke Can Be Heard on the 9-1-1 Call and John Participated in Staging the Call**

371. The segment of the Documentary analyzed in this section of the Complaint is found at page 5 through page 13 of the script attached hereto as *Exhibit B*.

372. In this segment, Defendants falsely asserted – as predicates to their false and defamatory accusation that John engaged in a criminal cover-up – that John and Patsy staged the 9-1-1 Call to cover-up for Burke, and that John lied about Burke being asleep during the 9-1-1 Call and the morning of December 26, 1996.

373. Patsy did not stage the 9-1-1 Call.

374. John did not participate in staging the 9-1-1 Call.

375. John did not lie about Burke not being in the kitchen at the time the 9-1-1 Call was made.

376. John did not lie about seeing Burke sleeping and/or remaining in his room on the morning of December 26, 1996.

377. Defendants directly conveyed their conclusion that John participated in staging the 9-1-1 Call through, among other statements and images, the following false and defamatory statements:

- a. I mean this changes things because their account is that Burke was asleep at the time. Richards, *Exhibit B*, p. 10.
- b. They made a point of saying he was asleep and he had nothing to do with it and that they never even asked him whether he heard anything. Richards, *Exhibit B*, p. 10.
- c. Was there a shift in kind of tone from sort of being very hysterical to suddenly something quite different? Richards, *Exhibit B*, p. 12.
- d. Right. What bothered me immensely, it sounded like she said “Okay, we’ve called the police, now what?” And that disturbed me. So I remained on the phone trying to hear what was being said – sounded like there were two voices in the room, maybe three different ones. I had a bad feeling about this. To me it seemed rehearsed. Mm-hmm. Archuletta, *Exhibit B*, p. 12.
- e. That’s one of the reasons why I even stayed on until they disconnected because there were things being said that somebody needed to know. Archuletta, *Exhibit B*, p. 13.
- f. We spoke to Kim Archuletta, who was the 9-1-1 dispatcher at the time, and she said the thing that stayed with her was as Patsy thought she had disconnected and she was typing up the call, she could hear a gear shift, an instant gear shift which was in direct contrast to the emotion of the call and she basically said that what she heard Patsy say was “Okay, we’ve called the police, now what?” Richards, *Exhibit B*, p. 13.
- g. You had John saying “We’re not talking to you,” very clipped. And then it could have been, “What did you do?” and “Help me, Jesus,” from Patsy. And then the young boy’s voice saying “Well, what did you find?” And we must remember that they did say in their statements that Burke was asleep. Why say he’s asleep

when he's clearly not. I believe we heard his voice on the 9-1-1. Richards, *Exhibit B*, p. 13.

378. Each of the above statements, individually in context and together in combination, conveyed the false and defamatory accusation that John participated in a fraudulent and staged 9-1-1 call. This accusation was a predicate for, and was calculated to convey and support, the accusation that John participated in a criminal cover-up.

379. Defendants also used fictional recreations and audio depicting their accusation to bolster the defamatory and factual impression of their conclusions.

380. In addition to the statements identified above, Defendants further utilized a number of suggestive juxtapositions and other statements designed to support their preconceived storyline that John participated in staging the 9-1-1 Call and otherwise engaged in a criminal cover-up on behalf of Burke. Among other things, Defendants stated the following in this segment:

- a. There are, you know, many factors that are very interesting from a forensic linguistic perspective. The fifth word used is the plural pronoun "we". "We" have a kidnapping. What does that even mean? Where's the ownership? Fitzgerald, *Exhibit B*, p. 5.
- b. She doesn't mention her daughter's name, she says my daughter, my six-year-old blonde. Clemente, *Exhibit B*, p. 5.
- c. I'm the mother . . . Richards, *Exhibit B*, p. 6.
- d. I'm the mother. Clemente, *Exhibit B*, p. 6.
- e. These are behavioral things that, I think, are extremely unusual. Clemente, *Exhibit B*, p. 6.
- f. The hanging up, if you will – when you make that phone call, someone close to you has disappeared, you're sending out that phone call for help. I've looked at a lot of 9-1-1 calls over the years. They'll hold on until the police get there, that's your lifeline, that help indicates hope. The moment you hang up that phone, you end the hope. And for that phone to be hung up, you've got to ask yourself why. Stanley, *Exhibit B*, p. 6.

- g. Right. And if they're legitimately hoping for their child to be taken care of, rescued, saved, whatever. If there is something else going on then you have a different set of parameters involved. Fitzgerald, *Exhibit B*, p. 6.
- h. And it's interesting that Patsy thought she had hung up the call and disconnected it while the dispatcher was actually calling out her name because she wanted to talk to her more, and keep her on the phone until the police arrived. . . But she did not hang up the phone. Clemente, *Exhibit B*, p. 6.
- i. In the background, we heard some voices. Lee, *Exhibit B*, p. 6.
- j. Some more voices. Who do you hear? In the 90's they tried to do enhancements of that tape. . . . There's been a lot of controversy about what they've actually uncovered on the tape. And most of the general public has never heard the enhanced version. We want to use today's technology to actually nail down what exactly was said and by whom in those final moments of that tape. Clemente, *Exhibit B*, p. 6.
- k. Yeah. I've never heard that before. Clemente, *Exhibit B*, p. 8.
- l. Right. There were only four people in that house. Richards, *Exhibit B*, p. 9.
- m. Right, one of them was dead. Clemente, *Exhibit B*, p. 9.
- n. I believe we've heard John Ramsey's voice. We've heard Patsy's voice. So we know the only other person in the address at the time is Burke. Richards, *Exhibit B*, pp. 9-10.
- o. This is hugely significant. Richards, *Exhibit B*, p. 10.
- p. Oh, my god. Clemente, *Exhibit B*, p. 10.
- q. Yeah, I've always been under a gag order so I've never really talked to anybody. Um, so my side of the story has never really been heard. Archuletta, *Exhibit B*, p. 10.
- r. This is the first time that anyone's asked for my opinion. . . . In 20 years. Archuletta, *Exhibit B*, p. 11.
- s. I just remember having that sunken feeling like something wasn't right. The problem was if you hear the frantic in her voice as she's speaking to me where she couldn't even answer my questions, it immediately stopped. Archuletta, *Exhibit B*, p. 12.

- t. Was there a shift in kind of tone from sort of being very hysterical to suddenly something quite different? Richards, *Exhibit B*, p. 12.
  - u. And it's interesting cause there are some bits that we can't quite make out but there are some very clear bits that we can. Richards, *Exhibit B*, p. 12.
  - v. Yeah, when we cleaned it up, we hear a man say "We're not speaking to you," and he's very stern, and then, I think we hear Patsy saying something like "What did you do? Help me, Jesus," or "Help me, Jesus. Help me, Jesus." And then Burke, I think, say "What did you find?" Clemente, *Exhibit B*, p. 12.
  - w. It was never addressed. I think it really would have turned the case around. Archuletta, *Exhibit B*, p. 13.
  - x. And that absolutely changes the entire focus of this investigation and we should keep that in mind as we evaluate the rest of this evidence. Clemente, *Exhibit B*, p. 13.
381. Defendants intentionally conveyed that John and Patsy staged the 9-1-1 Call.
382. Defendants based their purported accusation and rank speculation that John was involved in staging the 9-1-1 Call on forensic linguistics.
383. Forensic linguistics is, at best, an unreliable pseudo-science, yet Defendants represent that the Pseudo-Experts' linguistic analysis is credible and conclusive.
384. Defendants further consciously based their purported accusation and rank speculation that John was involved in staging the 9-1-1 Call on false and incomplete facts.
385. Defendants knew that they lied to the audience about the efficacy of the 9-1-1 Recording.
386. Defendants knew, failed to disclose, and grossly misrepresented that, in truth, Aerospace conducted an analysis of the 9-1-1 Recording in 1997 at the request of Boulder PD investigators and gave a nearly identical analysis of the 9-1-1 Call.

387. Indeed, Defendants knew that they conducted and portrayed a false, deceitful, and dishonest dramatization of Aerospace's twenty-year-old disputed analysis of the 9-1-1 Call and gave it the false impression of a new, real-time discovery made for the first time.

388. Defendants did not use new technology to "nail down what exactly was said and by whom" on the 9-1-1 Recording for the first time.

389. Despite their representations to the contrary, Defendants had already heard the purported enhancement of the 9-1-1 Recording.

390. Defendants lifted their purported breakthroughs straight from *Foreign Faction* and broadcast them nearly verbatim into the Documentary. *See, e.g., Foreign Faction*, pp. 100-102.

391. Defendants knew that they were merely reciting what Aerospace claimed to have discovered when it "enhanced" the 9-1-1 Call in 1997.

392. Defendants knew, contradicted, recklessly ignored, and failed to disclose that despite law enforcement efforts to analyze and enhance the 9-1-1 Recording, no consensus has ever been reached as to what, if anything, transpired on the 9-1-1 Recording.

393. As set forth above, even the FBI and U.S. Secret Service were unable to decipher any statements of the 9-1-1 Recording after Patsy hung up.

394. Defendants further knew, recklessly ignored, and failed to disclose that the 9-1-1 Recording was made a recycled tape of prior 9-1-1 calls.

395. Yet Defendants proclaimed that their use of new techniques conclusively established Burke's voice on the 9-1-1 Recording, and that John and Patsy made incriminating statements to Burke on the 9-1-1 Recording.

396. At the end of the 9-1-1 Recording, John did not say “We’re not talking to you”; and Defendants knew it.

397. At the end of the 9-1-1 Recording, Patsy did not say “What did you do? Help me, Jesus”; and Defendants knew it.

398. At the end of the 9-1-1 Recording, Burke did not say “Well, what did you find?”; and Defendants knew it.

399. Defendants further staged their purported interview with Kim Archuletta, the 9-1-1 operator.

400. Archuletta had already been interviewed, and Defendants knew it.

401. For instance, Archuletta had already given a virtually identical interview to Kolar in 2005. *See Foreign Faction*, p. 100.

402. Yet, Defendants intentionally give the impression that they are discovering, and Archuletta is giving, for the very first time, Archuletta’s version of events.

403. Defendants knew that Archuletta was not reliable or credible.

404. Defendants knew that Archuletta was not credible because they knew that she had already given her version of events to, at a minimum, Kolar.

405. Defendants knew that neither Archuletta’s statements nor Aerospace’s version of the 9-1-1 Recording were new evidence.

406. Defendants’ conscious decision to portray that 9-1-1 Recording and Archuletta’s version of events as newly discovered evidence that is “hugely significant” and “changes the entire focus of the investigation” was calculated to convey to viewers that their investigation was superior to all those investigations that preceded it, including those investigations resulting in

John and Burke's exonerations, and that they had made new discoveries about the 9-1-1 Call previously unknown to Boulder law enforcement authorities.

407. Defendants published their above accusations despite knowledge of their falsity or with reckless disregard for their falsity.

**E. Defendants Falsely Claim that Patsy Wrote the Ransom Note and that John Participated in Same**

408. The segment of the Documentary analyzed in this section is of the Complaint is found at pages 13 to 20 and page 62 of the script attached hereto as *Exhibit B*.

409. In this segment, Defendants falsely assert – as a predicate to their false and defamatory conclusion that John engaged in a criminal cover-up – that John and Patsy staged the Ransom Note.

410. The Ramseys did not write or participate in writing the Ransom Note.

411. The Ransom Note was written by an unknown intruder.

412. Defendants conveyed their above conclusions through, among other statements and images, the following false and defamatory statements

- a. I think she [Patsy] was the author of that ransom note. We know that was her pad. Her fingerprints were on that pad. The Sharpie pen we located that and ink matched it to the ransom note which bore handwriting characteristics that some experts said were remarkably similar to Patsy's. If we found that body of evidence in the possession of any third party, that's pretty demining evidence, but in this case, for some reason, the district attorney wanted to create some parallel universe why it wasn't hers. I find it preposterous. Thomas, *Exhibit B*, p. 62.
- b. There seems to be multiple motives embodied in this document so you first start out with this foreign faction – that's always stuck out in my mind. Clemente, *Exhibit B*, p. 14.
- c. The first language they learned in life was English. I have no doubt about that. Age is not always easy to determine, but I would certainly say this persons' an adult. No indication of sort of teenage slang, vernacular, so I would say we have someone, an adult, 30 or older. The last one and part of a linguistic profile is gender and this can be one of the trickiest ones to determine. There are at least

six examples of what I would call maternalistic language. The very first sentence is already circled. Can you picture a mother telling their young child “Listen carefully, when you get home,” not when you get back to your house, not when you get to your residence, “when you get home.” “Do not particularly like you” – would a guy necessarily care if someone likes them or not in this context? I find in the thousands of cases I have worked over the years, when someone puts a statement in like that, it turns out to be a female. Fitzgerald, *Exhibit B*, p. 16.

- d. Assuming this is done by an outside person who broke into the house for the purposes of a kidnapping. Fitzgerald, *Exhibit B*, p. 18.
- e. I think we can all agree this letter is clearly staged. What we have to decide through our investigation is whether it was staged by someone in the family or somebody who came into this home. Clemente, *Exhibit B*, p. 18.
- f. Right and much more prominent are the parental kidnappings of a non-custodial parent or by a non-custodial parent. So it was my belief at this juncture that as I said, the ransom note was a red herring and that it was staging. Walker, *Exhibit B*, p. 20.

413. Each of the above statements, individually in context and together in combination, conveyed the false and defamatory accusation that John participated in the use of the Ransom Note as part of staging to cover-up that Burke killed his sister. This accusation was a predicate for, and was calculated to convey and support, the accusation that John participated in a criminal cover-up.

414. In addition to the statements identified above, Defendants further utilized a number of suggestive juxtapositions and other statements designed to support their preconceived storyline that John participated in staging the Ransom Note and otherwise engaged in a criminal cover-up on behalf of Burke. Among other things, Defendants stated the following in this segment:

- a. I find it fascinating because first, it addresses, you know, it, the addressee, Mr. Ramsey. But then the next two words are “Listen carefully.” And if we, we look at the letter here, this jumps out at me simply because, number one, it’s a letter. What are we listening to? Stanley, *Exhibit B*, p. 14.
- b. So it should say read carefully. Clemente, *Exhibit B*, p. 14.

- c. And I wouldn't even expect to read carefully. You have a missing child, you're gonna read this carefully. That's a given. Stanley, *Exhibit B*, p. 14.
- d. The amount \$118 is very close to the bonus Mr. John Ramsey would have received or did receive that year. That's a unique number. The fact that it's so specific makes it stand out. Stanley, *Exhibit B*, p. 15.
- e. He's a millionaire. I mean if you're gonna do this, you go large. I mean why would you go for the \$118 when you can go for a million? Richards, *Exhibit B*, p. 15.
- f. When the Boulder investigators came to me and showed me this letter, I noticed some quotes in here that I said, "Well, I recognize them from somewhere." And it was sort of early in the Internet days and it wasn't as easy to search things back then. But I rented a few movies that I thought I recognized these lines from and the first of 'em comes from these four sentences I'm about to read. So if you follow along with me here, on the second page we have some quotes borrowed from a cinematic version of a kidnapping of a young girl, the 1972 movie "Dirty Harry." Fitzgerald, *Exhibit B*, p. 15.
- g. One of the things that we know from the actual crime scene video was that the house was filled with movie posters. Fitzgerald, *Exhibit B*, p. 15.
- h. "If we catch you talking to a stray dog, she dies." In the movie, instead of it actually being a dog, a dog breed is actually mentioned. "If you alert bank authorities, she dies, she dies, she dies." Well, we're not done. Last page, "Don't try to grow a brain, John." A certain character who was an LAPD police officer who was on a runaway bus was talking to a mad bomber on a cell phone. The movie was "Speed." Fitzgerald *Exhibit B*, p. 15.
- i. This here, "If you alert bank authorities, she dies." You told us early on follow your instructions or she'll be beheaded, executed, beheaded, so why do you have to keep telling us over and over again? 76% of this is extraneous. . . . It's not necessary. To me, they're trying to sell this now. It's a sales job. Stanley, *Exhibit B*, p. 15.
- j. Writing ability I would say is high. We have an advanced writing style expressed throughout this letter. The only mistakes are found in the first paragraph. We had the concept of foreign faction up here in the second sentence. Well, right below it we have the word "business" and if you'll notice, it's misspelled. There's an extra "s" in here. Perhaps someone who is not a native English speaker would in fact insert that extra "s." So what I noticed early on is that this was a purposeful mistake. This was done to tie in somehow to the concept that this person is a foreigner and perhaps does not speak English as their native tongue. Fitzgerald *Exhibit B*, p. 16.

- k. “Particularly,” “enforcement,” “countermeasures,” they’re all spelled properly. Clemente, *Exhibit B*, p. 16.
- l. What it tells me is there’s an element of disguise involved. These misspellings, they were inserted for a reason to make it look like it’s somebody other than who it really was. Language one, and I would clearly say it’s English. Fitzgerald, *Exhibit B*, p. 16.
- m. The less information you give in a ransom letter or note, the less of a chance you have of being caught. You don’t want to leave clues. This does just the opposite. Stanley, *Exhibit B*, p. 16.
- n. Yeah and that, the fact that it was written in the house, not before the fact in preparation for a kidnapping, which you would think they would, right? Clemente, *Exhibit B*, p. 17.
- o. Whoever wrote this managed to commit a murder, find the pad, find the pen, practiced a couple times because they didn’t want to show bad penmanship or something, write it and then put the pad and pen back to where they normally are kept. Clemente, *Exhibit B*, p. 17.
- p. It makes no sense at all to do that, unless it’s something other than what the note is making it appear to be. Fitzgerald, *Exhibit B*, p. 17.
- q. But even if they did it this fast, that’s 21 and a half minutes that they could’ve been caught. 21 and a half minutes that they stayed in the house longer than they needed to. Clemente, *Exhibit B*, p. 18.

415. Defendants intentionally conveyed that John and Patsy used the Ransom Note as staging to cover-up that Burke had killed his sister.

416. Defendants based their accusation and rank speculation that John was involved in staging the Ransom Note on forensic linguistics.

417. Forensic linguistics is, at best, an unreliable pseudo-science, yet Defendants represent that the Pseudo-Experts’ linguistic analysis is credible and conclusive.

418. Rather than rely on the established and judicially recognized science of handwriting analysis which totally undermines Defendants’ accusations against John and Burke,

the Documentary relied on the junk science of “statement analysis” to analyze the Ransom Note and form a false, misrepresentative, and unreliable basis for claiming that Patsy wrote the Ransom Note and John participated.

419. Defendants knew or recklessly disregarded that their Pseudo-Experts’ analysis of the Ransom Note was unreliable pseudo-science and would not be admissible evidence in a court of law.

420. Defendants further consciously based their purported accusation and rank speculation that John was involving in staging the Ransom Note on false and incomplete facts.

421. Defendants not only knowingly disregarded and failed to disclose the longstanding findings of the legitimate handwriting experts, but knowingly contradicted them.

422. The six legitimate handwriting experts who analyzed the original Ransom Note and original handwriting exemplars of John, Patsy, and Burke long ago rejected the theory that a member of the Ramsey family wrote the Ransom Note.

423. Each of the six handwriting experts concluded that Burke and John did not write the Ransom Note, and the consensus of the six experts was that the chances that Patsy wrote it were “very low.”

424. As set forth in the *Wolf Decision*,

During the investigation, the Boulder Police Department and Boulder County District Attorney’s Office consulted at least six handwriting experts . . . All six experts agreed that Mr. Ramsey could be eliminated as the author of the Ransom Note. None of the six consulted experts identified Mrs. Ramsey as the author of the Ransom Note. Rather, the experts’ consensus was that she “probably did not” write the Ransom Note. On a scale of one to five, with five being elimination as the author of the Ransom Note, the experts placed Mrs. Ramsey at a 4.5 or a 4.0. The experts described the chance of Mrs. Ramsey being the author of the Ransom Note as “very low.”

*Wolf Decision* at 1334; *see Exhibit C*.

425. Defendants knew that if a Ramsey did not write the Ransom Note, an intruder committed the murder.

426. Defendants misled their viewers and misrepresented the known evidence by knowingly and intentionally failing to disclose the legitimate experts' findings that the Ramseys did not write the Ransom Note.

427. The fact that a stranger to the Ramsey family wrote the Ransom Note is fundamentally inconsistent with Defendants' false accusation that John covered-up that Burke killed his sister.

428. Defendants further relied on multiple references to Hollywood films in the Ransom Note as evidence that it was written by Patsy. Yet Defendants fail to disclose that the author of the Ransom Note also lifted the line "listen carefully" from movies featuring kidnappings that were heavily referenced in the Ransom Note: (1) *Dirty Harry*, "Now listen to me carefully. Listen very carefully"; (2) *Nick of Time*, "I need you to listen carefully"; and (3) *Ruthless People*, "Listen very carefully!"

429. Despite claiming that the Ramsey home contained many movie posters, Defendants failed to disclose that investigators searched the Ramsey home and did not find any posters of the movies referenced in the Ransom Note (nor the movies themselves), nor did they find any evidence that any member of the Ramsey family had ever viewed those films.

430. Defendants also knew but failed to disclose that investigators had long ago recognized the Ransom Note's apparent references to movie dialogue.

431. Despite disclosing a handful of references to kidnapping films, Defendants failed to disclose and recklessly disregarded at least three additional movie references, one of which debuted less than two months before JonBenét's murder.

432. The idea that Patsy and John – in the midst of covering-up Burke’s killing of JonBenét in the middle of the night by strangling and sexually assaulting their daughter – not only recalled numerous Hollywood film references but took the time to work those film references into a three-page Ransom Note while carefully disguising the handwriting is so inherently improbable that it is not worthy of belief and certainly not a legitimate basis on which to base any accusation against the Ramsey family, and that leaving a long Ransom Note would not have been in the Ramseys’ best interests, either.

433. Defendants suggestion that precisely 76% of the words in the Ransom Note were extraneous further demonstrates their confirmation bias and conscious decision to skew all facts to support their accusations against the Ramsey family. Defendants’ intentional implication was that if an intruder had committed this crime, they would have used an economy of words. In doing so, Defendants intentionally ignore that an intruder may have written the Ransom Note to cast suspicion onto the Ramsey family, including a reference to \$118,000.

434. Defendants further falsely state that the only spelling or grammar mistake in the Ransom Note is the misspelling of “business.” However, the Ransom Note is littered with grammatical errors.

435. Defendants’ implication that the Ransom Note is high risk behavior for an intruder is similarly true for the Ramseys.

436. Indeed, as noted by the *Wolf Decision*, which Defendants consciously failed to disclose, “the length of time that it took to practice and write the note could also conceivably undermine any notion that Mrs. Ramsey wrote it. Under plaintiff’s scenario, Mrs. Ramsey was working quickly to create a staged crime scene. . . . Given those time constraints, and presumably a desire to provide as little handwriting as possible for purposes of future analysis,

she arguably would not have written such a long note.” *Wolf Decision* at 1361. This is even more persuasive in light of the several accurate quotations and references to dialogue from Hollywood films.

437. Defendants’ reliance on these immaterial details as evidence of the Ramseys’ guilt merely demonstrates the extremes to which they were willing to go to justify their preconceived storyline.

438. Defendants consciously ignored that there was no reasonable basis for accusing Patsy of authoring the Ransom Note and John of participating in same or being aware that Patsy was the author.

439. Defendants consciously ignored that none of the bases on which they base their accusations point to Patsy, John, or Burke as authors of the Ransom Note.

440. Indeed, many of the points Defendants rely on forcefully point to an intruder authoring the Ransom Note.

441. Defendants published their above accusations despite knowledge of their falsity or with reckless disregarding for their falsity.

**F. Defendants Falsely Cast Suspicion on John Based on Purported Behavior During the Hours After the 9-1-1 Call**

442. The segment of the Documentary analyzed in this section of the Complaint is found at page 18 through page 27 of the script attached hereto as *Exhibit B*.

443. In this segment, Defendants falsely asserted – as predicates to their false and defamatory conclusion that John engaged in a criminal cover-up – that John staged the discovery of JonBenét’s body and otherwise behaved in a guilty manner at the crime scene on December 26, 1996.

444. John did not stage the discovery of JonBenét’s body.

445. John spontaneously discovered JonBenét's body while searching the Ramsey home pursuant to Boulder PD's instructions.

446. Defendants begin this segment by introducing former FBI Agent Ron Walker ("Walker"), whom Clemente and Richards described as the only first responder who "went as a behavioral analyst," who "knew what to look for," and would "have the answers to some of the gaps we've got."

447. Defendants directly conveyed their conclusion that John staged the discovery of JonBenét's body through, among other statements and images, the following false and defamatory statements:

- a. But what I learned later on from Linda is that when she tells John, "We're going to search the house top and bottom and we're gonna start at the top." Ramsey is there with Fleet White. He grabs Fleet by the arm and makes a bee line for the basement door. John Ramsey opens the door, says something about finding his daughter and then turns the light on. Virtually every staged murder case that I have seen the perpetrator manipulates the arrival of friends or other family members who are then put in the situation where they actually discover the body or they are with the perpetrator as the body is discovered. Walker, *Exhibit B*, p. 21.
- b. They bring somebody along. They discover the body, but with a witness who can testify to their shock and awe and horror at what they find. Clemente, *Exhibit B*, p. 21.
- c. When Larry Mason and I came down here, the lights were on. . . . Probably because John Ramsey had turned them on after he had opened the door. Walker, *Exhibit B*, p. 23.
- d. The statements that were made said that John called out that she was here before he turned the light on. Clemente, *Exhibit B*, p. 24.
- e. From my perspective now I can look in here and see objects. . . . But I don't know that I can necessarily identify objects. . . . Now this just looks like a jumble of cloth. Walker, *Exhibit B*, p. 24.
- f. Right. And how would you know that that was actually your daughter wrapped up in there? Clemente, *Exhibit B*, p. 24.

- g. Right around the time that I was there, there was another detective there that I think had overheard John making a call for his airplane. This is after the body has been discovered. Why does John Ramsey want to leave so quickly when he has to understand that there's going to be a police investigation, and his daughter has just been killed. Walker, *Exhibit B*, p. 25.
- h. You know, for me this isn't just a red flag, this is an absolute anomaly. Richards, *Exhibit B*, p. 25.
- i. As I recall, he's never been asked those questions. Walker, *Exhibit B*, p. 24.

448. Each of the above statements, individually in context and in combination, conveyed the false and defamatory accusation that John staged the discovery of JonBenét's body. This accusation was a predicate for, and was calculated to convey and support, the accusation that John participated in a criminal cover-up of Burke killing his sister.

449. Defendants also used fictional recreations and audio depicting their accusation to bolster the defamatory and factual impression of their conclusions.

450. In addition to the statements identified above, Defendants further utilized a number of suggestive juxtapositions and other statements designed to support their preconceived storyline that John participated in staging the 9-1-1 Call and otherwise engaged in a criminal cover-up on behalf of Burke. For instance, Defendants stated the following in this segment:

- a. Well, more importantly, I want to control the movements of the people in that crime scene. About noon, Linda Arndt calls into Mason and tells him that uh, Ramsey has been out of pocket for about an hour and a half. Walker, *Exhibit B*, p. 20.
- b. First, when he reappears, his demeanor has changed. Richards, *Exhibit B*, p. 20.
- c. He's agitated. Clemente, *Exhibit B*, p. 20.
- d. That way we're not gonna run into the situation where for an hour and a half he goes missing again. Walker, *Exhibit B*, p. 21.
- e. He puts her down on the ground, but right here is a living room couch, a coffee table, chairs. Why would he put her on the floor? Clemente, *Exhibit B*, p. 21.

- f. And, and I asked them, I said, “Hey were you standing here when the body was found?” And he’s says, “yeah.” He says, “Ramsey brought the body up and put it right there.” I looked down at my feet and I said to French, I said, “You mean right here?” And he says, “Yeah, right there.” What I’m thinking is crime scene contamination. Walker, *Exhibit B*, p. 21.
- g. Right, or what about concealing the body for a time too? Richards, *Exhibit B*, p. 23.
- h. Or concealing the body, right. Walker, *Exhibit B*, p. 23.
- i. It was my belief that the philosophy that was kind of laid out for the police department that day was we have to treat them with kid gloves. Treat them with deference. Treat them as victims and not as suspects. . . . They were influential. They were wealthy. Walker, *Exhibit B*, p. 24.
- j. From what I can see, the influence here really had a very significant impact as to why people were allowed to come and go from the house. Richards, *Exhibit B*, p. 24.
- k. Yeah. Going through the list of things that initially puzzled me, but then I started thinking, when you add them all together, I started thinking, well, there’s something really bizarre and odd about all of this. Walker, *Exhibit B*, p. 24.
- l. First thing you do in a homicide case, if you have witnesses, is you separate them, you take them some place, and you get a statement. . . . And the only problem is, they didn’t get interviewed by the police. Walker, *Exhibit B*, p. 25.
- m. I certainly find that a very curious decision, why would you invite your friends to your home address when you’re in crisis and chaos. Richards, *Exhibit B*, p. 25.
- n. Especially if you they think that somebody actually came into their home and abducted their child. Why are they bringing in other friends? Clemente, *Exhibit B*, p. 25.

451. Defendants intentionally conveyed that John staged the discovery of JonBenét’s body and otherwise attempted to obstruct the police investigation.

452. Defendants falsely asserted that witness statements were made that John called out he found JonBenét’s body before he turned the light on in the Wine Cellar, and that he could not have seen JonBenét’s body without the light on.

453. Defendants knew and failed to disclose that John turned the light on before finding JonBenét as confirmed by John and the sole witness, Fleet White.

454. John was not “out of pocket” at any time on the morning of December 26, 1996. Rather, John was in his study in the Ramsey home.

455. John was not instructed by Linda Arndt to start his investigation at the top of the home. Rather, as Defendants knew, the phrase “top to bottom” is merely a common phrase for a thorough search.

456. Defendants further knew and failed to disclose that Linda Arndt is a biased and unreliable witness. Indeed, Defendants knew and failed to disclose that Linda Arndt had previously accused John of murdering his daughter, including knowledge that she had made that accusation on the morning show of a national television network, ABC.

457. Defendants sought to cast suspicion on John because he placed JonBenét’s body on the floor rather than the living room couch, but knowingly failed to disclose that he was directed by police to place her body on the floor.

458. Defendants then knowingly misrepresent John’s call to his airplane pilot that morning. Defendants knew that John was actually making travel arrangements for his other children to come to Michigan from out-of-state.

459. In sum, Defendants never missed an opportunity to purposefully skew and misrepresent true facts in order to support their preconceived storyline that John covered-up for Burke.

460. Defendants hid from the viewers the fact that Kolar had also relied on Ron Walker in *Foreign Faction*.

461. Defendants published their above accusations despite knowledge of their falsity or with reckless disregard for their falsity.

**G. Defendants Assert that JonBenét Suffered Massive Head Trauma Before Being Strangled to Death While Still Alive**

462. The segment of the Documentary analyzed in this section of the Complaint is found at page 31 through page 40 of the script attached hereto as *Exhibit B*.

463. In this segment, Defendants falsely asserted – as predicates to their false and defamatory conclusion that John engaged in a criminal cover-up – that Burke caused massive head trauma to JonBenét before she was later strangled to death while still alive but brain dead and without visible injuries.

464. Burke did not kill JonBenét.

465. John did not engage in a cover-up of Burke killing his sister.

466. John did not strangle JonBenét.

467. Through a series of false facts, incomplete facts, and suggestive juxta-positioning of facts, Defendants conveyed the false and defamatory gist that John strangled the remaining life out of JonBenét. For instance, Defendants state the following in this segment:

- a. I believe the family [would not let me in the Ramsey home]. The police had to get permission from them. They told the police “No dice. He’s not coming to this house.” They did not want me in the house. Maybe, must just be, that I would figure something out that nobody else knows. Spitz, *Exhibit B*, p. 32.
- b. This is what I had an artist draw for me. This is how the flashlight fits to perfection approximately half an inch through the bone. Spitz, *Exhibit B*, p. 33.
- c. Oh yeah. It made me wonder what is being put away, hidden? Spitz, *Exhibit B*, p. 34.
- d. Do you believe she was alive when she was struck on the head? Richards, *Exhibit B*, p. 34.
- e. Oh, yes. Spitz, *Exhibit B*, p. 34.

- f. And she was also alive when she was choked, strangled? Richards, *Exhibit B*, p. 34.
- g. Please understand this, when a very severe injury to the brain occurs, because the heart has its own ability to produce contractions, to cause a false impression of life existing. Spitz, *Exhibit B*, p. 34.
- h. That is my advantage as a forensic pathologist. They did not know that so they applied a mechanism of death that at face value that, oh she was strangled. And then of course she has a blow to the head, so which is it? Well, it's very simple when I explain to you that yes, she was strangled to make believe that was the cause of death. She already was brain dead. Spitz, *Exhibit B*, p. 34.
- i. There's a few more injuries that we need to talk about, the neck injuries and the ligatures because I think this is also kind of really important, the fact that her hands were tied in this way with a slip knot. Clemente, *Exhibit B*, p. 34.
- j. So if she's not unconscious, why doesn't she just do this [and remove the ligatures]? Clemente, *Exhibit B*, p. 34.
- k. Or if she had duct tape on her mouth. Richards, *Exhibit B*, p. 34.
- l. Yeah, but if she's dead . . . Spitz, *Exhibit B*, p. 34.
- m. So what does that tell you? This was staging. Clemente, *Exhibit B*, p. 34.
- n. You're totally correct. Spitz, *Exhibit B*, p. 34.
- o. Why does anybody need this contraption [garrote]? Why do you need the stick? . . . You can just put that around your hand and then do the same thing on the other hand, totally unnecessary. When you break into a house, isn't time of the essence? . . . You want to come in, do your killing and leave. So why do you need this? Spitz, *Exhibit B*, p. 35.
- p. The skin is extremely elastic so it would go with the impact and not hold on to the impact. . . . The skull may break but the skin may not. . . . There would not have been any blood. Spitz, *Exhibit B*, p. 36.
- q. The reason why we want to do impact test is to determine whether or not that flashlight could've made the fracture in the skull of JonBenét Ramsey and whether or not it took a tremendous amount of force to create that kind of fracture. Clemente, *Exhibit B*, p. 37.

- r. But one thing is important, there was not a drop of blood on the outside. Why was there not a drop of blood? Because there is an elasticity to the skin, so this is all blunt. Nothing here will cut the skin. When the flashlight came down if the flashlight went in for about half an inch, the skin was pushed in, broke the boke and did not cause any damage to the skin. Spitz, *Exhibit B*, p. 37.
- s. So would it take tremendous strength to do this? Richards, *Exhibit B*, p. 38.
- t. No because this is a heavy object with three batteries in it. The skull of a six-year-old, we call them “eggshell skulls.” . . . You don’t need such huge amount of force. Not that is a mistake. It could be an adult, It could be a child that did it. Spitz, *Exhibit B*, p. 38.
- u. And you can see how it’s broken. It’s very similar to the type of break that we saw on JonBenét. Clemente, *Exhibit B*, p. 39.
- v. The impact of the demonstration was a convincing confirmation of the association of the flashlight with the injury in the head. . . . There was, in my view, no doubt that this flashlight or one exactly like it caused that injury. Spitz, *Exhibit B*, p. 39.

468. Taken alongside Defendants’ concluding segment, wherein they directly accuse John of completing the actions necessary to cover-up for Burke, the above statements in context and in combination support the defamatory gist that John engaged in a criminal cover-up, including strangling JonBenét while she was still alive.

469. In this segment, Defendants conducted a segment with Spitz that culminated with a reprehensible, staged demonstration intended to plant in the viewers’ minds the powerful and incriminating image of Burke killing JonBenét: Spitz commands a ten-year-old boy to, in effect, pretend he is bludgeoning JonBenét to death by using a flashlight to strike a pig skin skull covered with a blonde wig.

470. The main proposition of this flashlight segment is lifted directly from *Foreign Faction*. Spitz also suggested that the flashlight was the murder weapon during his original review of the case in the 1990s.

471. With no direct evidence establishing the murder weapon, Defendants recklessly state that the murder weapon used to kill JonBenét was the three D-cell Maglite flashlight (the “Flashlight”) that had been found on the kitchen counter of the Ramsey home.

472. Defendants’ false and defamatory conclusion that John covered-up that Burke killed JonBenét depends on the Documentary misleading the viewer into believing that the Flashlight was the murder weapon and the blow it delivered preceded the strangulation. After all, not even Defendants could sell the absurd notion that Burke, at the tender age of nine, asphyxiated his sister with a garrote made of cut cord, slipknots, and Patsy’s broken paintbrush handle.

473. But as Spitz and the other Defendants knew, the coroner who actually examined JonBenét’s body found her cause of death to be by asphyxiation with a garrote found deeply embedded in her neck at her autopsy.

474. Despite Defendants’ aversion to the truth, even they cannot contest the undisputed physical and medical findings establishing that JonBenét was alive when she was asphyxiated with the garrote. So, Defendants falsely assert that she was bludgeoned and “brain dead” or “virtually dead” before being asphyxiated, but still technically alive at that time.

475. Defendants also conceded that JonBenét had no visible head injury as a result of the blow with the Flashlight.

476. Defendants failed to confront the inherent improbability of the story they manufactured which requires finding that John discovered JonBenét while she was still alive and without any visible head injury, but they quickly concocted their plan, found the materials, made the garrote, and choked what life remained out of their six-year-old daughter while sexually assaulting her.

477. Later in the Documentary – when accusing Burke of causing the purported stun gun injuries to JonBenét Ramsey’s lifeless body with his toy train track – Kolar touches on the absurdity of Defendants’ accusation: “An adult would have been calling 9-1-1 for an ambulance” upon finding their child alive but unresponsive.

478. Further, Defendants knowingly failed to disclose that there were strong unmistakable signs that JonBenét was actually conscious when she was asphyxiated, including physical evidence that JonBenét struggled against the garrote, clawing at the ligature around her neck, leaving tell-tale fingernail marks.

479. The medical evidence reviewed by the physician who performed her autopsy established that JonBenét was alive and conscious when she was being tortured with a garrote.

480. If JonBenét was conscious while being garroted, Defendants knew their audience would not accept that a family member – much less her nine-year-old brother – was responsible for the brutal physical and sexual assault that preceded her death.

481. Defendants knowingly and falsely stated that the fracture to JonBenét’s “skull preserved the appearance, the dimensions of the [Flashlight],” which “fits to perfection.”

482. The Documentary initially created a misleading and false demonstration with a flashlight that had Pseudo-Expert Clemente striking a thin wooden board with a flashlight to allegedly recreate the physical damage to JonBenét’s skull from a blow delivered by the Flashlight. The experiment has no scientific validity. This made-for-TV demonstration was staged and phony. In short, Defendants knowingly lied to the viewers by performing a fake experiment, all with the aim of convincing the viewers that Burke killed his sister with the flashlight.

483. Defendants then knowingly conducted a second misleading and false demonstration with a flashlight: only this time a ten-year-old child is instructed to use a flashlight to strike a purported skull covered by a pigskin and blonde wig.

484. Defendants knew that their demonstration with the child and a flashlight had no scientific validity.

485. Defendants rigged this demonstration in an obvious attempt to recreate the image in the viewers' minds of Burke killing JonBenét. For example, after the boy struck the wigged skull, the Documentary revealed the damage. Defendant Clemente falsely proclaimed that the defect in the skull is "very similar to the type of break that we saw on JonBenét." The injury to JonBenét's skull was a rectangle with rounded edges, whereas the skull in the Documentary has a triangular hole. Yet Defendants falsely proclaim, "The demonstration was a convincing confirmation of the association of the Flashlight with that injury in the head" and there is "no doubt that this Flashlight or one exactly like it caused that injury."

486. Upon information and belief, Defendants did takes of several demonstrations of the pig skull being struck by the ten-year-old actor until they got a result they felt would support their false accusations against John and Burke.

487. As Defendants knew, legitimate and knowledgeable experts had previously determined that it took a tremendous amount of force to create the fracture of JonBenét's skull – considerably more force than a child could muster. Nevertheless, Defendants ended the flashlight segment with the knowingly false conclusion that "it didn't take tremendous strength to" cause the injury to JonBenét's skull.

488. Defendants' second Flashlight demonstration was designed and manufactured by Defendants to convey to the viewers the shocking image of Burke striking JonBenét's head with a flashlight.

**H. Defendants Misrepresent the Interviews of the Ramsey Family to Cast Suspicion Toward John**

489. The segment of the Documentary analyzed in this section of the Complaint is found at page 40 through page 44 of the script attached hereto as *Exhibit B*.

490. In this segment, Defendants falsely asserted – as support for their false and defamatory conclusion that John engaged in a criminal cover-up – that John and Patsy's media statements were indicia of their guilt by suggesting through the application of a faulty and unreliable forensic linguistics analysis that their statements demonstrated that they knew who killed JonBenét.

491. On the contrary, John and Patsy provided media interviews to truthfully defend themselves against the hailstorm of media coverage that developed around JonBenét's death.

492. Defendants directly conveyed their conclusion that John and Patsy lied during their media statements through, among other statements and images, the following false and defamatory statements:

- a. This is probably a very honest question John and Patsy Ramsey are asking themselves. It's very likely they know who did it and they may still be trying to figure out "why did this happen?" Fitzgerald, *Exhibit B*, p. 41.
- b. It's like an unconscious utterance in a way. Richards, *Exhibit B*, p. 41.
- c. It's almost like he jumped past that conclusion as to who did it, and now he wants to why. Stanley, *Exhibit B*, p. 41.

493. Each of the above statements, individually and together in combination, conveyed the false and defamatory accusation that John lied during his media appearances because he

knew who JonBenét's killer was. This accusation was pre-calculated to convey and support the accusation that John participated in a criminal cover-up.

494. In addition to the statements identified above, Defendants further utilized a number of suggestive juxtapositions and other statements designed to support their preconceived storyline that John lied during media appearances, knew who JonBenét's true killer was, and otherwise engaged in a criminal cover-up on behalf of Burke. Among other things, Defendants stated the following in this segment:

- a. Within days of JonBenét's body being found the Ramseys speak to CNN before they've even given interviews to the Boulder Police department. Richards, *Exhibit B*, p. 40.
- b. It's probably one of the most important because it was right at the start within days after their daughter being found murdered and they invite the media in and I think it's really interesting what they actually said at that press conference as well. It's not just about them being proactive. It's the content of what they said. Richards, *Exhibit B*, p. 40.
- c. Right and they have not sat down with the police department to do separate interviews in order to rule them out as suspects in this crime, yet they're sitting down with CNN. Clemente, *Exhibit B*, p. 40.
- d. Someone's breaking into your home, someone has killed and abused your child. Richards, *Exhibit B*, p. 40.
- e. You're gonna be angry and you're gonna want to find out who did it and you want to see punishment. That's the natural response. Stanley, *Exhibit B*, p. 40.
- f. Shaking her head "no." Shaking her head "no," and then when John says "yes" she changes her head to a nod up and down. Clemente, *Exhibit B*, p. 41.
- g. What I find interesting here, Jim, is he said "yes." That's an answer to that question. . . . What throw that in there? It's not necessary; you have your answer "yes." . . . But he wants to make sure the listener or the viewer hears we are a loving and gentle family. "Gentle," that's the message that's being sent here. For our grief to resolve itself we now have to find out why this happened. Stanley, *Exhibit B*, p. 41.
- h. I mean is I the "why" is important? Clemente, *Exhibit B*, p. 41.

- i. It's a very odd turn of phrase isn't it? Richards, *Exhibit B*, p. 41.
- j. Stop right there. Why is that such an accomplishment to go and talk to the police about the possible resolution of your daughter's homicide? Stanley, *Exhibit B*, p. 43.
- k. A hundred and twenty days after it happened. Fitzgerald, *Exhibit B*, p. 43.
- l. Right. Why is that a successful accomplishment. Stanley, *Exhibit B*, p. 43.
- m. Compare this statement that he's making right now hemming and hawing, umming and awing, to what he said about four minutes ago. "I did not kill my daughter." Patsy, "I didn't murder my daughter." Now all of a sudden he's not even answering the question and, and the non sequiturs he's throwing out there he can't even put in cogent sentences. And what I find in situations such as this it's not just important what is said, it can also be just as important, if not more so, what is not said. Stanley, *Exhibit B*, p. 44.

495. Defendants intentionally conveyed their accusation and rank speculation that John was lying during his media appearances because he knew who JonBenét's killer was.

496. Defendants based their accusation and rank speculation that John lied on forensic linguistics.

497. Forensic linguistics is, at best, an unreliable pseudo-science, yet Defendants misrepresented that the Pseudo-Experts' linguistic analysis is credible and conclusive.

498. Defendants' so-called statement analysis further makes many of the same assertions made by Kolar in *Foreign Faction*.

499. As with Defendants' prior statement analysis, Defendants cherry picked particular statements, examining very limited, hand-selected, and highly edited segments of John and Patsy's interviews.

500. Defendants knew when publishing their accusation that John was lying that there was no reasonable basis for doing so.

501. That John referenced wanting to know “why” JonBenét was killed and reiterating that his family was a gentle family is not a reasonable, valid, or scientific bases or evidence upon which to base a malicious accusation that Burke killed JonBenét and John covered it up.

502. That Patsy nodded her head during her interview is not a reasonable, valid, or scientific basis upon which to base a malicious accusation that Patsy engaged in a criminal cover-up.

503. Defendants’ attempts to find inculpatory meanings in such statements was an exercise in reckless fabrication manufactured out of whole cloth.

504. Defendants were further aware at the time of publication that John and Patsy did not merely “go and talk to the police,” but rather they, as grieving parents of their murdered six-year-old daughter, were subjected to lengthy interrogations related to the law enforcement investigation of their involvement, if any, while they knew the real killer continued to roam free.

505. Defendants further consciously based their purported accusation and rank speculation that John lied during his media appearances on false and incomplete facts.

506. Contrary to Defendants’ assertion to the contrary, Defendants knew that John, Patsy, and Burke had all been interviewed by the Boulder PD before CNN interviewed John and Patsy on January 1, 1997 (the “CNN Interview”).

507. The Boulder PD’s interview of Burke on December 26, 1996, was clearly exculpatory. Defendants knew that Boulder PD Detective Fred Patterson had interviewed Burke one-on-one that day and concluded that Burke had no knowledge of what had happened to JonBenét – a conclusion that absolutely contradicts any notion that Burke killed JonBenét. Defendants knowingly disregarded the trained detective’s conclusions and intentionally failed to

disclose same to the viewers. It is inherently improbably that Burke – as a nine-year-old child a few hours removed from killing his sister – could deceive a trained detective.

508. As Defendants knowingly failed to disclose, the Boulder PD interviewed John shortly after the murder, including on December 26, 27, and 28, 1996.

509. As Defendants knowingly failed to disclose, the Boulder PD interviewed Patsy shortly after the murder, including on December 26 and 28, 1996.

510. Defendants further knowingly failed to disclose that John and Patsy offered to sit for extensive interviews with the Boulder PD in the days after JonBenét's murder. The Ramseys had asked that the interviews occur at their friends' home, because Patsy's doctor said she was too ill to sit for a long interview at the police station. The Boulder PD refused this offer, and even went one horrible step further: threatening to withhold JonBenét's body from the family until John and Patsy came down to the police station for the interviews.

511. Defendants knowingly failed to disclose that Patsy was heavily medicated during the CNN Interview. Mired in grief, Patsy had taken anti-anxiety medication and tranquilizers that altered her speech and demeanor.

512. Defendants published their above accusations despite knowledge of their falsity or with reckless disregard for their falsity.

**I. Defendants Falsely Attack the Intruder Theory on All Fronts with Fraudulent Demonstrations, False and Incomplete Facts, and Stale Rejected Theories**

513. Rather than consider alternative intruder suspects, Defendants skewed their presentation and elected to falsely attack the intruder theory so as to leave only the Ramseys as viable suspects.

514. Defendants made their purpose known immediately at the beginning of their intruder theory analysis: “Do you believe that pieces of evidence point us outside the house to a kidnaper or somebody who’s trying to make people believe they’re a kidnapper or inside the house towards the family?” Clemente, *Exhibit B*, p. 46.

515. Throughout the Documentary, Defendants falsely asserted – as a predicate to their false and defamatory conclusion that John engaged in a criminal cover-up – that the intruder theory should be “eliminated” because it is contradicted by the evidence.

516. As with the remainder of Defendants’ false and defamatory conclusions, Defendants asserted that their declaration that it must have been a member of the Ramsey family rather than an unknown intruder was based upon a legitimate investigation by experts discovering truthful facts for the first time. For instance: “So we’re all here almost 20 years later and we’re on a fact-finding mission. This is a reinvestigation and of course we’ve got some of the best brains, not just in the U.S., but in the world, around the table trying to understand, you know, what went on in the house that night.” Richards, *Exhibit B*, p. 46.

517. Defendants directly conveyed their conclusion that the intruder theory should be “eliminated” because it is contradicted by the evidence and therefore a member of the Ramsey family must have committed the crime through, among other statements and images, the following false and defamatory statements:

- a. To me this crime happened within the four walls of that home. Fitzgerald, *Exhibit B*, p. 59.
- b. So I think you can eliminate the outside intruder hypothesis. So more likely it’s cover-up something. What to cover-up? Lee, *Exhibit B*, p. 59.
- c. I don’t think the evidence that stands up to scientific or behavioral scrutiny indicates that somebody came in from outside that home and killed JonBenét. Clemente, *Exhibit B*, p. 80.

518. Each of the above statements, individually in context and together in combination, conveyed the false and defamatory accusation that that the intruder theory should be “eliminated” and therefore a member of the Ramsey family inside the house that night committed the crime. That accusation was a predicate for, and was calculated to convey and support, the accusation that John participated in a criminal cover-up.

519. Defendants also used fictional recreations to support their accusations and to bolster the defamatory and factual implications of their conclusions.

520. In addition to the statements identified above, Defendants’ further utilized a number of suggestive juxtapositions of facts and other information designed to support their preconceived notion that an intruder did not commit this crime and therefore a member of the Ramsey family inside the house was guilty. Among other things, Defendants stated as follows:

- a. And because there was no history of abuse, no domestic violence child abuse, in the house, ergo, he though it must be an intruder. Richards, *Exhibit B*, p. 47.
- b. Yeah. Why does it only have to be those two things? Parents can be involved in another way other than murder. It’s not one or the other. There’s a bunch of shades in-between and we have to look at every one of them. That’s the responsibility of an investigator. Clemente, *Exhibit B*, pp. 47-48.
- c. And that’s something that seemed to escape a lot of the people who thought intruders were involved. Kolar, *Exhibit B*, p. 48.

521. In addition to the statements identified above, Defendants’ conclusion that the evidence rendered the intruder theory ”eliminated” was based upon a series of false factual attacks on the intruder theory and the evidence supporting the intruder theory, including: (a) falsely concluding that the basement window entry point surmised by Lou Smit was impossible based upon a fraudulent cobweb demonstration; (b) falsely concluding – in contradiction to their own Pseudo-Expert’s conclusions in the 1990s and the official autopsy report – that JonBenét was not sexually assaulted; (c) falsely asserting that Burke caused the injuries Lou Smit thought

to be stun gun injuries with a train track toy; and (d) falsely concluding that the DNA evidence on which former Boulder DA based her 2008 exoneration of the Ramsey family is worthless.

522. Because the Boulder DA exonerated and refused to prosecute the Ramseys, while the Boulder PD sought to investigate John and Patsy, Defendants then seek to purposefully undermine the Boulder DA's Office's credibility and to bolster that of law enforcement.

523. These false factual conclusions, suggestive juxtapositions, and other statements were predesigned to support Defendants' preconceived storyline that John engaged in a criminal cover-up on behalf of Burke.

524. Defendants consciously based their accusation that the intruder theory is "eliminated" on false and incomplete facts, which are hereinafter addressed.

**1. Defendants' Create a False Cobweb Demonstration to Discredit the Intruder Theory**

525. The segment of the Documentary analyzed in this section of the Complaint is found at page 48 to page 50 and page 22 of the script attached hereto as *Exhibit B*.

526. In this segment, Defendants concocted a fraudulent cobweb demonstration – as a predicate to their false and defamatory conclusion that John engaged in a criminal cover-up – to falsely assert that no intruder could have entered the basement Window as stated by Lou Smit and, therefore, the intruder theory should be "eliminated" because it is contradicted by the evidence.

527. No member of the Ramsey family committed this crime.

528. An intruder murdered JonBenét.

529. In a misguided and misrepresentative effort to lend false credibility and support to their conclusion that it is that the evidence did not support a finding that an intruder committed

this crime, Defendants made the following factual assertions and suggestive juxta-positioning of facts:

- a. We're rebuilding key rooms that relate to this case [including] the basement [and] the wine cellar where JonBenét's body was eventually found. Richards, *Exhibit B*, p. 22.
- b. We can't turn back time inside the real house, but what we can do here, as much as we can, clinically and scientifically try to put it together. Schmidt, *Exhibit B*, p. 22.
- c. Reproduce us and put us in it. Richards, *Exhibit B*, p. 22.
- d. It's incredibly important for us to actually see and feel what that house looked like and actually forming a hypothesis and a theory of how the crime was actually committed. Clemente, *Exhibit B*, p. 22.
- e. Uh, you've done a good job with the, the duplication. Walker, *Exhibit B*, p. 22.
- f. So one of the key issues with this case is the theory of an intruder coming through the basement. That was Lou Smit's theory, right? Richards, *Exhibit B*, p. 47.
- g. And he was hired by? Clemente, *Exhibit B*, p. 47.
- h. By Alex Hunter. Kolar, *Exhibit B*, p. 47.
- i. The district attorney at the time. Clemente, *Exhibit B*, p. 47.<sup>1</sup>
- j. He spent about a week looking at the crime scene photos and such and came up with the theory of the intruder. Kolar, *Exhibit B*, p. 47.
- k. The cobwebs in that corner, there you go. Kolar, *Exhibit B*, p. 48.
- l. Oh wow, okay, stop. Here you can see that all this dust and debris is already caught in it. It's weathered. It's got materials in it. It's very clear that this is not a brand new web. Clemente, *Exhibit B*, p. 48.

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<sup>1</sup> As will be discussed below, this reference is important because Defendants smear DA Hunter and DA Lacy later in the Documentary in order to undermine the Boulder DA's office refusal to prosecute the Ramseys and 2008 exoneration of the Ramseys, among other pro-Ramsey actions, as well as to suggest that the Pseudo-Experts and Boulder PD were correct to focus on the family.

- m. That would not have survived someone going through that window. Kolar, *Exhibit B*, p. 48.
- n. Right. Go back where he's in the window sill and freeze it, please. When he's coming through, if there was a cobweb going across here, he would've knocked it out. And look where his hand is. His hand is holding the corner there, exactly where that spider web was. Clemente, *Exhibit B*, p. 49.
- o. Yep. So all the foliage would've been disturbed. Richards, *Exhibit B*, p. 49.
- p. [Some of the debris] would be on my – the soles of my shoe as I'm walking through. In the crime scene video, this was completely intact and of course here's a photo showing that it was. And I was trying to be careful, but I'm not sure if the intruder or intruders, if they were coming through would really be thinking, "Hang on, there's a cobweb there. I must leave that intact." Richards, *Exhibit B*, p. 50.
- q. The whole theory that Lou Smit espouses is that this suitcase was left here in order for the intruder or intruders to get out through this window. You gotta figure out a way to get out of there and not further disturb what's left of these spider webs. Clemente, *Exhibit B*, p. 50.
- r. I mean it's just completely gone now. And look at the disturbance that you've made. This would've been very obvious to the crime scene investigators, but they did find the web here and they didn't find that disturbance. Clemente, *Exhibit B*, p. 50.
- s. Right. So it makes no sense. Richards, *Exhibit B*, p. 50.

530. Defendants intended their statements and recreations to convey that the intruder theory should be "eliminated" because an intruder could not have entered the home through the basement Window.

531. Defendants knowingly misrepresented to the viewers that their recreations of the basement Window were accurate portrayals of the actual crime scene.

532. In truth, their re-creations were significantly different in key areas from the actual crime scene and were intentionally fraudulent portrayals.

533. Defendants lifted their “cobweb” theory straight out of *Foreign Faction* but falsely presented it to the viewers as a newly discovered theory in the ordinary course of their purported investigation.

534. A crime scene video taken shortly after JonBenét’s murder shows the cobwebs and debris in the Window. There is a small cobweb in the bottom corner of the Window and bits of debris, such as leaves and Styrofoam packing peanuts.

535. Defendants knowingly and intentionally inflated the cobweb and debris in the Documentary until they bore no meaningful resemblance to the condition of the Window as it existed shortly after JonBenét’s murder. The Documentary’s cobweb is anchored from almost halfway across the sill to almost halfway up the right-side jamb, whereas the actual cobweb spans a much smaller distance. Crime scene photos of the actual condition of the Window are attached hereto as *Exhibit J*; photos of the Documentary’s misrepresentative recreation of the Window are attached hereto as *Exhibit K*.

536. Pseudo-Expert Richards then crawled in and out of the Window in a manner that ensured she would disturb the cobweb and scatter the other debris. Defendants then concluded that it “makes no sense” that the murderer used the Window because the grossly inflated cobweb in the Documentary was broken while the small cobweb in the actual Window appeared intact after the crime.

537. Defendants’ conclusions about the Window are blatant misrepresentations, as Defendants knew that the actual cobweb was small enough to remain undisturbed by a person climbing through the Window.

538. Defendants had actual knowledge of, knowingly contradicted, failed to disclose, and recklessly ignored evidence about the Window that supported the Lou Smit intruder theory,

including the following: (1) there were at least eight unlocked windows and/or doors found in the Ramsey home on the morning of December 26th; (2) there was a new scuff mark on the wall under the Window that was likely caused by the intruder; (3) debris outside of the Window had been pushed to either side of the Window, while debris in front of the other two windows remained intact, (*compare Exhibit J with Exhibit K*); (4) leaves and packing peanuts found outside the Window were located on the floor of the basement beneath the broken Window; (5) a leaf and packing peanuts like those found outside the Window were found in the Wine Cellar; and (6) the grate outside the Window well had been recently raised and lowered, as evidenced by fresh green foliage stuck underneath the grate, where it could not have grown naturally.

539. Defendants had actual knowledge of, knowingly contradicted, failed to disclose, and recklessly ignored other facts that supported the Lou Smit intruder theory, including the following: (1) fibers consistent with those of the garrote were found in JonBenét's bed; (2) other items not belonging on the second floor were found there on the day after the murder, including a brown paper sack with a rope in it; (3) small pieces of the brown paper sack were found in JonBenét's bed; (4) unidentified and recent "HI-TEC" shoeprints in the basement that did not match any shoes owned by the Ramseys; (5) an unidentified Caucasian pubic or auxiliary hair not matching the Ramseys; and (6) an unidentified baseball bat found outside the Ramsey home.

540. Defendants' purposefully false Window demonstration provided no evidence supporting the accusation that John covered-up that Burke killed JonBenét.

541. Defendants published their above statements despite knowledge of their falsity or with reckless disregard for their falsity.

## **2. Defendants Falsely Convey That JonBenét Was Not Sexually Assaulted**

542. The segment of the Documentary analyzed in this section of the Complaint is found at page 50 through page 51 and page 80 of the script attached hereto as *Exhibit B*.

543. In this segment, Defendants falsely asserted – as a predicate to their false and defamatory conclusion that John engaged in a criminal cover-up – that JonBenét was not sexually assaulted because Defendants realized the viewers would have found it difficult to believe that John, Patsy, or Burke penetrated JonBenét’s vagina either during her life or in connection with her death or as part of a cover-up.

544. The Documentary spent less than two minutes discussing whether JonBenét was sexually assaulted, because there is zero evidence that supports Defendants’ assertion that she was not sexually assaulted.

545. In a misguided and misrepresentative effort to lend credibility and support to their conclusion that JonBenét was not sexually assaulted by an intruder, Defendants made the following factual assertions and suggestive juxta-positioning of facts:

- a. It’s really no sexual assault here. Lee, *Exhibit B*, p. 80.
- b. Certainly over the last few months, we’ve heard about all the theories that this was someone outside the family, an intruder, coming through the basement, who assaulted her sexually. Richards, *Exhibit B*, p. 50.
- c. An autopsy technician brought for me a microscopic slide that was from the genital tract of this young lady, JonBenét. And I looked at that in the microscope. The amount of damage is almost nonexistent. There is a few fibers of wood in this microscopic slide. Spitz, *Exhibit B*, p. 51.
- d. Really look at that size, it’s microscopic. Lee, *Exhibit B*, p. 51.
- e. You probably wouldn’t even have seen with the naked eye. Spitz, *Exhibit B*, p. 51.

- f. I think there's two possibilities. One is that the piece of wood was actually inserted there and the other is that it's secondary transfer. Clemente, *Exhibit B*, p. 51.
- g. A secondary transfer could be anything even during transfer the body, because don't forget the body had been moved up and then moved quite a few times in different locations, then the blanket was put on, so many manipulations at the scene. Lee, *Exhibit B*, p. 51.
- h. Underwear was only spot, could be from any other transfer. It's really no sexual assault here. Lee, *Exhibit B*, p. 51.
- i. No. This finding is not indicative of a sexual assault. Spitz, *Exhibit B*, p. 51.
- j. They're looking for the wrong type of person if this was not a sexually motivated crime, which we believe it was not. Richards, *Exhibit B*, p. 51.
- k. Exactly. Lee, *Exhibit B*, p. 51.

546. Defendants intended their statements and recreations to convey that JonBenét was not sexually assaulted in order to lend credibility to their false and defamatory conclusion that an intruder did not commit this crime and therefore a member of the Ramsey family in the house that night did commit the crime. Defendants knew that despite almost four hours of falsely casting suspicion against John and Burke, the viewers would find it extremely difficult to believe that John inserted a splintered piece of wood into his daughter's vagina as a gratuitous act to cover-up that Burke killed his sister.

547. But, in this instance, Defendants cannot simply suspend all rational thought or hide behind pseudo-science when making their false and rank speculation that JonBenét was not sexually assaulted: their own Pseudo-Expert concluded in the 1990s that JonBenét was sexually assaulted with a piece of wood and had published those same statements to CBS Detroit radio the very day the Documentary was initially broadcast.

548. Defendants cannot even be afforded the label of "confirmation bias," because they knew that Pseudo-Expert Spitz had previously concluded that JonBenét was sexually assaulted.

Indeed, on page 66 of *Foreign Faction*, Kolar had written regarding Spitz's findings: "Inflicted perimortem with her death, was the insertion of the paintbrush handle into JonBenét's vaginal orifice."

549. Defendants knowingly failed to disclose Spitz's prior conclusions confirming a sexual assault.

550. As Defendants knew, additional and irrefutable evidence existed that established as a fact that JonBenét's murderer also sexually assaulted her: (1) blood on JonBenét's underwear and the entrance of her vagina; (2) JonBenét's hymen had been freshly broken, likely close in time to her death; (3) forensic pathologists that examined her found that she had been penetrated; and (4) fragments of wood that matched the garrote handle were found in her vagina.

551. The Documentary discussed with the viewers only a sliver of the evidence proving that JonBenét was sexually assaulted, while intentionally choosing to discount, contradict, and ignore that evidence with absurd, false, and incredible explanations.

552. The Documentary discussed wood that was found in JonBenét's genital tract. This piece of wood – particularly when analyzed with the other evidence – strongly suggested that JonBenét was sexually assaulted.

553. Defendants did not disclose that the wood found in JonBenét's vagina was traced to the paintbrush handle used to construct the garrote handle.

554. The Documentary attempted to dismiss the piece of wood by strongly suggesting that it found its way into her vagina due to a secondary transfer. Pseudo-Expert Lee states that the secondary transfer could have occurred when JonBenét's body was moved repeatedly or when a blanket was put on her.

555. The secondary transfer theory regarding the piece of wood is so inherently improbable and absurd as to be patently false. As Defendants knew, the piece of wood was traced to the very same paintbrush that was used to make the garrote handle. Further, the secondary transfer theory assumes that wood from the paintbrush somehow crawled through JonBenét's pajamas, then through her underwear, and then up into her genital tract, all because her body was moved or a blanket was placed on top of her. This nonsensical scenario evidences the irrational depths these "experts" were willing to go to in order to support their false accusations against John and Burke.

556. Spitz's claim that JonBenét was not sexually assaulted is particularly egregious, because he changed his opinion without identifying any new evidence supporting the change or disclosing his prior opinion to the viewers.

557. The Documentary discussed JonBenét's blood spot in her underwear. The blood spot, in conjunction with other evidence, is powerful proof that JonBenét was injured from the sexual assault.

558. The Documentary cursorily discounted the blood spot. Pseudo-Expert Lee fell back on his secondary transfer theory, ignoring the virtual absence of blood on other parts of JonBenét's body and the barriers the blood would have had to get through to reach JonBenét's underwear. In short, Defendants' secondary transfer theory is so irrational and improbable that it is not worthy of belief, and it contradicts the undisputed evidence of her sexual assault. Yet, because Defendants continuously tout Lee's expertise and credibility, the viewers were misled by conveying this absurd assertion as truth.

559. Defendants published their above accusations despite knowledge of their falsity or with reckless disregard for their falsity.

### **3. Defendants Falsely Assert that Burke Caused the Stun Gun Injuries with His Train Toy**

560. The segment of the Documentary analyzed in this section of the Complaint is found at page 52 through page 53 and page 76 through page 77 of the script attached hereto as *Exhibit B*.

561. In this segment, Defendants falsely conveyed – as predicates to their false and defamatory conclusion that John engaged in a criminal cover-up – that an intruder did not inflict stun gun injuries to JonBenét but rather the burn marks on her body were inflicted by Burke with his train toy.

562. Burke did not inflict the injuries to JonBenét’s back or face with a train toy or any other object.

563. An intruder caused the injuries to JonBenét’s back and face.

564. In a misguided and misrepresentative effort to lend false credibility and support to their conclusion that an intruder did not commit this crime, Defendants made the following factual assertions and suggestive juxta-positioning of facts:

- a. The stun gun played a very key part in Lou Smit’s theory. Richards, *Exhibit B*, p. 52.
- b. The whole theory is that it would subdue her, or make her unconscious. Clemente, *Exhibit B*, p. 53.
- c. It does the actual opposite. It just doesn’t make any sense. Richards, *Exhibit B*, p. 53.
- d. They don’t look anything like that. Clemente, *Exhibit B*, p. 53.
- e. If this were done to this kid, you would have a scream from this kid that would have done through the entire building. Spitz, *Exhibit B*, p. 53.
- f. And a Sargent at my office said, hey – I might have found something that could possibly be responsible for these injuries. Hey talked about the O-gauge track, and I asked Boulder PD to do some one to one photos with this as well as with the

train tracks. These pins that connect the tracks together, you can see that the scaled pictures of the two outside pins of the train track matched exactly to the injuries on JonBenét. You've got this train room and pieces of track here in this room, and then there were pieces of train track in the crime scene video that were on the floor in Burke's room as well. I thought it was an incredible discovery, to find a toy in the house that could have been responsible for these injuries. Kolar, *Exhibit B*, p. 76.

- g. You know, I would have to conclude that it's either this or something like it. Spitz, *Exhibit B*, p. 77.

565. Defendants intended their statements and recreations to convey that no intruder committed this crime because a stun gun was not used on JonBenét as Lou Smit and a highly respected pathologist had previously concluded.

566. Defendants lacked any credible or reliable basis to assert how JonBenét would have responded to being stunned, and they knew it.

567. Defendants' position that a stun gun would not restrain a six-year-old child is inaccurate, rank speculation. Moreover, stun guns are used as weapons by law enforcement officers across the nations for a reason: they subdue individuals, even grown adults.

568. Defendants had actual knowledge of, knowingly contradicted, failed to disclose, and recklessly ignored prior findings and photographs that explained and depicted, the striking similarities of JonBenét's burn mark injuries to those of other dead stun gun victims.

569. As Defendants knew, their unreliable stun gun demonstration proved nothing about the injuries JonBenét suffered when she was stunned and was purposefully staged in a misrepresentative manner to support Defendants' accusations against John and Burke.

570. Defendants further lacked any basis for suggesting that, even assuming the injuries were not stun gun injuries, then the injuries must have been caused by a member of the Ramsey family, much less that Burke inflicted the injuries with a train toy.

571. Like so many other details portrayed by Defendants as part of their purported new reinvestigation, Defendants merely echoed Kolar's unsupported speculation in *Foreign Faction*. *Foreign Faction* asserts: (1) that "Spitz opined that the mark on her cheek had been caused by the imprint of a small object versus a deteriorating burn mark from a stun gun" (p. 246); (2) that the marks from a stun gun do "not match the injuries on the body of JonBenét" (p. 272); (3) that "it is [Kolar's] belief that JonBenét would have screamed bloody murder if [a stun gun] had ever been used on her" (p. 311); (4) that Kolar's colleague in Telluride, "Sergeant Harry Stephens" sent Kolar "a single piece of the 'O' gauge style train track, the same model of train and track depicted in the crime scene video of the basement play room" (p. 384); and (5) that Kolar thought "I think you just found the weapon used to inflict those marks on JonBenét" (p. 385). Even the purported scaled photographs used by Defendants to support their position are lifted directly from *Foreign Faction*. See pp. 385-386.

572. Defendants published their above statements with actual knowledge of falsity or with reckless disregard for the truth.

#### **4. Defendants Falsely Claim that the DNA Evidence is Worthless**

573. The segment of the Documentary analyzed in this section of the Complaint is found at page 54 through page 59 of the script attached hereto as *Exhibit B*.

574. In this segment, Defendants falsely conveyed – as a predicate to their false and defamatory conclusion that John engaged in a criminal cover-up – that the DNA evidence used by former Boulder DA Mary Lacy to exonerate the Ramseys in 2008.

575. To lend false credibility and support to their conclusion that an intruder did not commit this crime and therefore a Ramsey did commit the crime, Defendants made the following factual assertions and suggestive juxta-positioning of facts:

- a. DNA technology has evolved significantly since 1996. Today trace DNA, or what some people call touch DNA, can actually be found in multiple situations and you have to actually understand what is the significance in any particular case. Since twenty years ago, DNA has gone from the science where we needed a lot of material in order to find something. Clemente, *Exhibit B*, p. 54.
- b. The first generation DNA. Lee, *Exhibit B*, p. 54.
- c. The panty, here's some foreign DNA was found but not to any family members. That DNA maybe has no forensic value, it just has some innocent explanation got there. It's not a true piece of physical evidence to link somebody or to exonerate somebody. Come to my Institute of Forensic Science Center laboratory. Should test again for DNA. That can shed some light on the whole case. Lee, *Exhibit B*, p. 54.
- d. Dr. Lee, isn't it true that DNA can transfer from one garment that's worn on top of another garment? That just the friction pulling it on, wearing it, moving back and forth can transfer. Clemente, *Exhibit B*, p. 58.
- e. There are some studies even say, send a shirt to laundry sometimes can have a transfer come back. Lee, *Exhibit B*, p. 58.
- f. It seems like District Attorney Lacy should not have exonerated anybody based on just transferred DNA. Clemente, *Exhibit B*, p. 58.
- g. DNA recovered from the case sample probably should be ignored. Lee, *Exhibit B*, p. 58.
- h. I think they have to take your recommendations and re-test with newer technology, with more reliable DNA tests, all the evidence that they have. DNA is reliable evidence if you interpret it properly. Clemente, *Exhibit B*, p. 58.

576. Defendants intended their statements and recreations to convey that an intruder did not commit this crime because the male foreign DNA found at the scene is not valid or reliable evidence.

577. The decision by Defendants to ignore the DNA evidence discovered in 1997 and 2008 defies modern law enforcement's use of DNA and, without a legitimate basis to do so, undermines the extensive and beneficial use of DNA to solve crimes and exonerate innocent individuals. Efforts to find an innocent explanation for foreign DNA found on the body or

clothing of a murder victim border on the preposterous and evidence a biased and improper approach to a homicide investigation.

578. Defendants intended their statements and recreations to convey that their use of superior technology in their alleged complete and legitimate reinvestigation allowed them to solve this crime, whereas the Boulder DA's investigation was flawed by use of older technology.

579. In truth, Defendants merely rehashed stale theories, including those espoused in *Foreign Faction*.

580. Defendants published their above statements despite knowledge of their falsity or with reckless disregard for their falsity.

**5. Defendants Purposefully Undermine the Boulder DA's Office to Further Discredit the Intruder Theory**

581. The segment of the Documentary analyzed in this section of the Complaint is found at page 59 through page 65 of the script attached hereto as *Exhibit B*.

582. The Boulder DA did not find evidence to support the filing of any criminal charges against any member of the Ramsey family.

583. The Boulder DA hired Lou Smit, recognized as one of the most foremost homicide detectives in the nation, who conducted a thorough review of the actual evidence developed by law enforcement investigators and concluded that an intruder brutally tortured and murdered JonBenét.

584. The Boulder DA signed an affidavit stating under oath that no evidence existed that justified Burke being viewed as anything other than a possible witness.

585. The Boulder DA issued a press statement stating that there was no evidence against Burke.

586. The Boulder DA's special prosecutor that oversaw the 13-month grand jury investigation issued a press statement stating there was no evidence against Burke.

587. A different Boulder DA issued a press statement stating that it was more likely that an intruder committed the crime.

588. That same Boulder DA issued a press statement exonerating the entire Ramsey family.

589. With the exception of Boulder PD Chief Beckner's press statement that there was no evidence against Burke – which Defendants did not disclose to viewers – the Boulder PD aggressively investigated the Ramsey family.

590. Accordingly, to support their accusation that John covered-up for Burke and that an intruder did not commit this crime, Defendants maligned former Boulder DA Hunter and former Boulder DA Lacy.

591. In a misguided and misrepresentative effort to lend false credibility and support to their conclusion that an intruder did not commit this crime, Defendants made the following factual assertions and suggestive juxta-positioning of facts:

- a. Well the fear from inside the department [that there may be a killer on the loose] was not felt because some people felt that they knew who the murderers were. However, we wanted to make the community feel comfortable, so we would do extra patrol. Gretchen, *Exhibit B*, p. 60.
- b. I think there was not some killer on the loose or not some random killer roaming the neighborhoods looking for little girls. Gretchen, *Exhibit B*, p. 60.
- c. So that must've been pretty frustrating to see what was reported in the media about a killer being on the loose. Kolar, *Exhibit B*, p. 60.
- d. I think the media was led to believe that. There were other voices speaking to the media. . . . The DA. Gretchen, *Exhibit B*, p. 60.
- e. Even though that may not have been the attitude of what was actually going on in the case. Gretchen, *Exhibit B*, p. 60.

- f. The JonBenét case destroyed morale completely. There was no morale. You know when you're a police officer; you want to work with the District Attorney's office. You should be partners in your job . . . and we weren't at all. The goal is to find the bad guy and put him behind bars. Gretchen, *Exhibit B*, p. 61.
- g. Well, the parents of the child, they had money. The District Attorney's office and some of the administration did not want to hear that an affluent member of the community was guilty of a crime like this. They didn't want to hear that. I don't think they wanted to solve this crime. And if they had to go down a different path that might not have been the truth, I think they were willing to do that. Gretchen, *Exhibit B*, p. 61.
- h. [I]n this case, for some reason, the district attorney wanted to create some parallel universe why it [the ransom note] wasn't her's [Patsy's]. Thomas, *Exhibit B*, p. 62.
- i. Did you feel you were hamstrung from the beginning? Clemente, *Exhibit B*, p. 62.
- j. Ah, it's the understatement of the, of the day Jim. Thomas, *Exhibit B*, p. 62.
- k. And – okay so who was responsible for that? Clemente, *Exhibit B*, p. 62.
- l. The District Attorney. Thomas, *Exhibit B*, p. 62.
- m. “Mr. District Attorney, no disrespect intended, but a little girl is moldering in the ground and something needs to be done. Are you going to call a grand jury?” And I'll never forget Alex Hunter, the elected District Attorney's response, “I need to get with my people. This is a political decision.” I leaned back after working this case for two years, against that cinderblock wall and thought to myself, “I can't do this anymore. I won't do this anymore.” Thomas, *Exhibit B*, p. 63.
- n. It became about politics and agendas and creating a smoke screen. Why? Richards, *Exhibit B*, p. 63.
- o. If the grand jury, those who heard all the evidence and heard from all the witnesses felt that there were a ground to indict the Ramseys then Alex Hunter, you would, you know, it's surprising that he decided not to prosecute them. Richards, *Exhibit B*, p. 63.

592. Defendants intended to discredit the Boulder DA's office, and thereby discredit the intruder theory while bolstering the Boulder PD's flawed investigation of John and Patsy.

593. As Defendants knew but failed to disclose, the fact that the Boulder DA that convened the grand jury and the special prosecutor that oversaw the grand jury believed there was no evidence to support Defendants' accusation that John covered-up for Burke is strong and compelling evidence of their innocence.

594. Indeed, despite knowing that the grand jury received no evidence that Burke killed JonBenét as publicly confirmed by prosecutors, Defendants knowingly asserted that the rejected recommendation of a possible charges against John and Patsy evidenced that they were covering for Burke because Burke could not be prosecuted due to his age: "I think the most likely probability is that the adults in that family, John and Patsy Ramsey – and this is consistent with what the grand jury wanted to indict them for – staged this to look like a monster predator had come in their house and killed their daughter" to protect Burke. Clemente, *Exhibit B*, p. 83.

595. Defendants knowingly failed to disclose that their accusation was contradicted by former Boulder PD Chief Beckner's pre-grand jury public exoneration of Burke in 1997.

596. Defendants knowingly failed to disclose that their accusation was contradicted by former Boulder DA Hunter's public exoneration of Burke in 1999 during the grand jury proceeding.

597. Defendants knowingly failed to disclose that their accusation was contradicted by Special Prosecutor Kane's December 1999 public statement exonerating Burke approximately two months after the grand jury investigation concluded.

598. Defendants knowingly failed to disclose that their accusation was contradicted by former Boulder DA Hunter's public exoneration of Burke in 2000.

599. Defendants knowingly failed to disclose that their accusation was contradicted by the Boulder DA's exoneration of the Ramsey family in 2008.

600. Defendants knew that the Boulder DA did not present an evidence-based theory to the grand jury that John covered-up that Burke killed JonBenét, yet they falsely conveyed to their audience that John and Patsy were indicted by the grand jury for covering up Burke's crime.

601. Finally, this accusation was also scripted from *Foreign Faction*. See p. 428 ("I believe each member of the Ramsey family, home on the night of the murder, may have been involved at least as an accessory after the fact. Burke, only nine years old at the time, could not have been prosecuted for any crime because, in Colorado, a child under ten years of age is presumed incapable of forming criminal intent. The statutes of limitations for the crime of accessory after the fact have long since expired").

602. Defendants knew that they lacked any reasonable basis for conveying that the grand jury believed John covered-up that Burke killed JonBenét.

**J. Defendants Falsely Assert that Burke Lost His Temper and Killed JonBenét Over a Lone Piece of Pineapple**

603. The segment of the Documentary analyzed in this section of the Complaint is found at page 70 through page 76 and page 80 of the script attached hereto as *Exhibit B*.

604. In this segment, Defendants falsely conveyed – as predicates for their false and defamatory conclusion that John engaged in a cover-up – that Burke killed JonBenét after losing his temper when JonBenét stole a piece of pineapple from Burke's snack.

605. Defendants first falsely conveyed that Burke had a bad temper and a history of hitting JonBenét by relying on Judith Phillips, a witness they knew was not credible or reliable and whom had previously accused the Ramsey family in tabloid interviews. For instance:

- a. I think he had a bad uh, Burke had a temper. It's like he had a chip on his shoulder. He had hit JonBenét. Before the murder I would have to say it was probably a year and a half. They were playing in the yard and apparently he hit her with a golf club right here. Phillips, *Exhibit B*, p. 70.

- b. Oh, I think I asked Patsy at the time when I was photographing them, what the scar was. She said that the kids were playing and Burke lost his temper and hit her with a golf club. Phillips, *Exhibit B*, p. 70.
606. Burke did not attack JonBenét with a golf club, and Defendants knew it.
607. Defendants knew it because, as referenced in *Foreign Faction*, the golf club incident was an accident.
608. Defendants next conveyed that Burke had mental problems by relying on hearsay information that they knew was not credible or reliable:
- a. One other connection, internal, in this family that we haven't discussed – there were reports that Burke had a history of scatological problems. Clemente, *Exhibit B*, p. 71.
  - b. One of the former housekeepers, as we mentioned, had talked about him smearing feces on a bathroom wall. Kolar, *Exhibit B*, p. 71.
  - c. And there was a softball-sized ball of feces found in JonBenét's bed at some point.
  - d. The media perception or community perception can be that they're the perfect family, but once you start to scratch the surface, you see that that's not the case. Richards, *Exhibit B*, p. 71.
609. Burke did not demonstrate any scatological behavior, and Defendants knew it.
610. In addition to concluding that Burke killed JonBenét over a piece of pineapple in their concluding segment on page 80, Defendants also falsely asserted – as a predicate to their false and defamatory conclusion that John engaged in a criminal cover-up – that JonBenét ate a single piece of Burke's pineapple and he killed her over it in a fit of rage, as follows:
- a. So one of the key issues with this case comes back to something that might look quite innocuous and inconsequential, but it also tells us a lot about what probably when on that night. Richards, *Exhibit B*, p. 73.
  - b. In JonBenét's small intestine, there was a piece of organic material that looks like pineapple. Clemente, *Exhibit B*, p. 74.
  - c. Which means, it's way after the meal. Lee, *Exhibit B*, p. 74.

- d. So she completely digested her dinner, and after that, she then ate this pineapple. Clemente, *Exhibit B*, p. 74.
- e. So you start linking all these dots, it gives us a possible timeline. Lee, *Exhibit B*, p. 74.
- f. Yes, you approximately know the time that they came back home. . . . The pineapple was ingested subsequently. Spitz, *Exhibit B*, p. 74.
- g. Do you think this could have been the tipping point that started the entire rest of the cascade of events that happened on the day she died? Clemente, *Exhibit B*, p. 75.
- h. Could be. Spitz, *Exhibit B*, p. 75.
- i. Such a simple question to ask, why isn't he just saying what it is? He's evading any answer and is uncomfortable about answering. This should be an insignificant conversation. Richards, *Exhibit B*, p. 76.
- j. I think he's aware that that piece of pineapple in JonBenét's stomach actually creates a major problem in terms of the timeline of when and how she was killed. Clemente, *Exhibit B*, p. 76.

611. Again, Defendants' false accusation that pineapple was the tipping point resulting in JonBenét's death is rank speculation.

612. To convince viewers that their rampant speculation deserved serious consideration, Defendants spliced in a clip of a blonde girl stealing a piece of pineapple from a young boy, who, in turn, violently grabs the girl by the wrist.

613. Upon information and belief, Defendants had actual knowledge and failed to disclose that a Boulder PD analysis after the autopsy determined that JonBenét's small intestine had the remnants cherries, grapes, and pineapple – common fruit cocktail ingredients. Yet, because the presence of cherries and grapes completely undermine Defendants' series of events, Defendants consciously failed to share that information with viewers. Instead, Spitz merely asked “Did the pathology report indicate what the pineapple looked like, or the gastric contents?”

614. Further, the Pseudo-Experts were aware that the presence of the fruit cocktail in JonBenét's stomach does not establish a concrete timeline from which investigators may estimate her time of death, and that the minimum amount of time it would require for the fruit to get to JonBenét's lower intestine undermined the theory that it "started the cascade of the rest of events that happened on the day she died."

615. Defendants also knowingly failed to disclose that the amount of time it would have taken the pineapple to travel to JonBenét's small intestine is fundamentally inconsistent with the Burke-did-it accusation.

616. Defendants had no factual basis for speculating that JonBenét took a piece of Burke's pineapple, much less that her fingerprints were not present on Defendants' purported smoking gun because she only "snatched one piece."

617. Upon information and belief, Defendants knowingly failed to disclose that there was more than one piece of fruit in JonBenét's digestive tract.

618. Upon information and belief, Defendants knowingly failed to disclose that there was more than one type of fruit in JonBenét's digestive tract.

## **CAUSES OF ACTION**

### **COUNT I - DEFAMATION (ALL DEFENDANTS)**

619. John reasserts and incorporates by reference paragraphs 1 through 618 of this Complaint as if fully restated herein.

620. Defendants negligently and maliciously published the false and defamatory gist that John completed the final act ending JonBenét's life: strangling her to death with a garrote.

621. Defendants negligently and maliciously published the false and defamatory accusation that John covered-up that Burke killed JonBenét.

622. Defendants negligently and maliciously published the false and defamatory accusation that John engaged in a criminal cover-up and lied to police.

623. Defendants published and communicated the false and defamatory statements about John to third-parties and did so without privilege or authorization.

624. Defendants published their false and defamatory accusations against John with actual malice – e.g., with actual knowledge of falsity and/or with reckless disregard for falsity.

625. Defendants also published their false and defamatory statements against John with common law malice – e.g., in bad faith and/or with ill-will towards John.

626. Defendants' false and defamatory accusations against John are defamatory per se, thereby causing serious and permanent harm to John's reputation.

627. Defendants' false and defamatory accusations against John caused him to be exposed to public hatred, contempt and ridicule and continues to so expose him.

628. Defendants' false and defamatory accusations against John were repeated and republished worldwide throughout the media and by countless private individuals. Examples are attached hereto as *Exhibit L*.

629. Defendants intended that their false accusations against John be republished.

630. The republications of their false and defamatory accusations against John were reasonably foreseeable by Defendants at the time they published the statements.

631. The republications of Defendants' false and defamatory accusations against John were the natural and probable result of Defendants' original publication of those false and defamatory statements.

632. As a direct and proximate result of Defendants' false and defamatory accusations against John, he has suffered and will continue to suffer damage and other harm, including economic damages, damages to his reputation, mental anguish, and special damages.

633. Defendants' conduct demonstrates that degree of willful misconduct and an entire want of care that raises a conscious indifference to the consequences of their actions.

634. Defendants published their accusations against John with constitutional actual malice, thereby entitling John to an award of punitive damages.

635. John is also entitled to an award of punitive damages to punish Defendants for their unlawful conduct and to penalize and deter them from repeating similar unlawful and egregious conduct.

636. John is also entitled to recover exemplary and/or punitive damages because Defendants are guilty of fraud, oppression, and malice in publishing the false accusation that John strangled JonBenét to death and engaged in a criminal cover-up.

#### **COUNT II – CONSPIRACY TO DEFAME (ALL DEFENDANTS)**

637. John reasserts and incorporates by reference paragraphs 1 through 636 of this Complaint as if fully restated herein.

638. Defendants and their Pseudo-Experts agreed to form and engaged in a conspiracy to create and publish the false and defamatory Documentary.

639. Defendants and their Pseudo-Experts preconceived the story line that John covered-up that Burke killed JonBenét.

640. Defendants and their Pseudo-Experts pre-calculated and pre-planned to make their false accusations against John under the guise of conducting a sham reinvestigation and claiming that the accusation was based on the evidence discovered in the reinvestigation.

641. Defendants and their Pseudo-Experts knowingly agreed to participate in the Documentary's fraudulent portrayal of a reinvestigation of the murder of JonBenét.

642. Defendants and their Pseudo-Experts knowingly agreed to present the ultimate conclusion of Kolar's *Foreign Faction*, and the supposed reinvestigation was a charade.

643. Defendants and their Pseudo-Experts knowingly agreed to an unlawful plan to make their false accusations against John.

644. Each of the Defendants knowingly and intentionally took a responsible part in the publication of the Documentary, including Defendants' false and defamatory accusations against John.

645. Defendants and their Pseudo-Experts knowingly engaged in concerted action and made overt actions in furtherance of their unlawful plan to publish their false and defamatory accusations against John.

646. Defendants and their Pseudo-Experts knowingly took concerted action and made overt actions in furtherance of their unlawful plan to mislead the viewers into believing that John strangled JonBenét to death and engaged in a criminal cover-up.

647. Defendants and their Pseudo-Experts, acting jointly and according to their preconceived and unlawful plan, knowingly and recklessly published false and defamatory statements with actual malice conveying that John strangled JonBenét to death and engaged in a criminal cover-up.

648. Through the conspiracy, Defendants proximately caused John to be exposed to public hatred, contempt and ridicule and continue to so expose him.

649. As a direct and proximate result of Defendants' conspiracy and the false and defamatory gist regarding John, he has suffered and will continue to suffer damage and other

harm, including economic damages, damages to his reputation, mental anguish, and special damages.

650. John is entitled to an award of punitive damages to punish Defendants for their unlawful conspiracy and to penalize and deter them from repeating similar unlawful and egregious conduct.

651. John is also entitled to recover exemplary and/or punitive damages because Defendants by and through their conspiracy are guilty of fraud, oppression, and malice in publishing that John strangled JonBenét to death and engaged in a criminal cover-up.

### **COUNT III – JOINT VENTURE (CBS AND CRITICAL CONTENT)**

652. John reasserts and incorporates by reference paragraphs 1 through 651 of this Complaint as if fully restated herein.

653. CBS and Critical Content entered into an agreement indicating an intention to undertake a joint venture in connection with the Documentary.

654. CBS and Critical Content jointly undertook to produce and publish the Documentary.

655. Pursuant to their joint venture agreement, CBS and Critical Content undertook the Documentary project for profit.

656. Pursuant to their joint venture agreement, CBS and Critical Content shared in the profits as well as losses in connection with the Documentary.

657. Pursuant to their joint venture agreement, CBS and Critical Content contributed skills and property in connection with the Documentary.

658. Pursuant to their joint venture agreement, CBS and Critical Content had a community interest and control over the Documentary, including a joint right of control.

659. CBS and Critical Content preconceived the story line that John strangled JonBenét to death and engaged in a criminal cover-up.

660. Pursuant to their joint venture agreement, CBS and Critical Content planned to accuse John of strangling JonBenét to death and engaging in a criminal cover-up under the guise of a sham reinvestigation and claiming that the accusation was based on the evidence discovered in the reinvestigation.

661. Pursuant to their joint venture agreement, CBS and Critical Content knowingly agreed to participate in the Documentary's fraudulent portrayal of a reinvestigation of the murder of JonBenét.

662. Pursuant to their joint venture agreement, CBS and Critical Content knowingly agreed to present the ultimate conclusion of Kolar's *Foreign Faction*, and the supposed reinvestigation was merely a charade.

663. Pursuant to their joint venture agreement, CBS and Critical Content knowingly agreed to accuse John of strangling JonBenét to death and engaging in a criminal cover-up.

664. Pursuant to their joint venture agreement, CBS and Critical Content knowingly and intentionally took a responsible part in the publication of the Documentary, including the false and defamatory statements conveying that John strangled JonBenét to death and engaged in a criminal cover-up.

665. Pursuant to their joint venture agreement, CBS and Critical Content knowingly and recklessly published false and defamatory statements with actual malice conveying that John strangled JonBenét to death and engaged in a criminal cover-up.

WHEREFORE, Plaintiff John Ramsey respectfully requests that this Court enter judgment, jointly and severally, against Defendants, awarding him compensatory damages in an

amount not less than \$100 Million (\$100,000,000.00) and punitive damages to punish and deter Defendants in an amount not less than \$250 Million (\$250,000,000.00) and granting such other and further legal or equitable relief deemed appropriate.

Respectfully submitted,

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Dated: September 14, 2017

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims in this action triable by jury.

Respectfully submitted,

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