

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DAN RATHER,

Plaintiff,

-against-

LESLIE MOONVES and  
ANDREW HEYWARD,

Defendants.

Index No.

SUMMONS

09602372

To: Leslie Moonves  
51 West 52<sup>nd</sup> Street  
New York, New York 10019-6119

Andrew Heyward  
73 Scenic Drive  
Hastings-on-Hudson, New York 10706

**FILED**  
AUG 03 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR §§ 301, 503.

Dated: August 3, 2009

SONNENSCHN NATH & ROSENTHAL LLP

By: 

Martin R. Gold  
Gary Meyerhoff  
Edward J. Reich

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SUPREME COURT OF THE STATE OF NEW YORK  
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DAN RATHER,

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-against-

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COMPLAINT

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Plaintiff, Dan Rather, by his attorneys, Sonnenschein Nath & Rosenthal LLP, for his Complaint against Leslie Moonves and Andrew Heyward alleges, upon personal knowledge with respect to his own acts, and upon information and belief with respect to the acts of others, as follows:

**NATURE OF THE ACTION**

1. Plaintiff, Dan Rather, one of the foremost broadcast journalists of our time, seeks to recover damages from Leslie Moonves and Andrew Heyward, senior officers of CBS Corporation ("CBS"), his employer of 44 years, for their fraudulent conduct which has cost Mr. Rather significant financial loss in his chosen trade and profession and seriously damaged his reputation. As explained more fully herein, these claims arise from CBS's intentional mishandling of the aftermath of a story, broadcast by CBS on September 8, 2004, narrated by Mr. Rather and produced by Mary Mapes, on *60 Minutes II*, which concerned the performance of President George W. Bush as an officer in the Texas Air National Guard ("TexANG") during the Vietnam War (the "Broadcast").

2. The Broadcast reported that, in 1968, high level political influence had facilitated Mr. Bush's acceptance in the TexANG, thus assuring that he would not be required to serve in the war in Vietnam; that after having been trained as a fighter pilot, in 1972, Mr. Bush violated a direct order and failed to appear for a required physical examination; and that high level political influence was again engaged to avoid military discipline and obtain an honorable discharge from the military.

3. The Broadcast incorporated copies of documents written by Mr. Bush's commanding officer, Lt. Colonel Jerry B. Killian ("Documents"), corroborating important aspects of the story.

4. A broad and, in many instances, well-organized attack on the authenticity of the Documents immediately followed the Broadcast, led by conservative political elements supportive of the Bush administration. The purpose of this attack was to deter CBS News from reporting news in a manner unfavorable to the Bush Administration, and in the process, to diminish the credibility and careers of Mr. Rather, Ms. Mapes and others at CBS News whom they considered to be opponents of the Bush Administration.

5. Throughout his career, Mr. Rather has promoted, championed, and been emblematic of journalistic independence and journalistic freedom from extraneous interference such as governmental, political, corporate or personal interests. CBS's improper responses to the attacks on the Documents, directed by Mr. Moonves, Mr. Heyward, and others, wrongfully damaged Mr. Rather and these values which he championed. In this action, Mr. Rather seeks substantial damages, both compensatory and punitive, from the defendants for their wrongful acts.

6. The wrongful acts by CBS described herein were directed by defendant Leslie Moonves, Chief Executive Officer of CBS, Sumner Redstone, Chief Executive Officer of Viacom, Inc. ("Viacom"), at the time CBS's corporate parent, and defendant Andrew Heyward, formerly President of CBS News, a division of CBS.

7. Following the Broadcast, CBS announced that it was retaining an independent panel to conduct a thorough investigation into the Broadcast and its production, when in fact its intention was to conduct a biased investigation with controlled timing and predetermined conclusions in order to prevent further information concerning Bush's TexANG service from being uncovered. That investigation, controlled as it was, exonerated Mr. Rather, but the Broadcast was nevertheless used by CBS as an excuse for wrongful acts committed against him.

8. Central to the plan to pacify the White House was to offer Mr. Rather as the public face of the story, and as a scapegoat for CBS management's bungling of the entire episode – which, as a direct result, became known publicly as "Rathergate." CBS management, principally Mr. Moonves and Mr. Heyward, coerced Mr. Rather into publicly apologizing and taking personal blame for alleged journalistic errors in the Broadcast. Moreover, as defendants well knew, even if any aspect of the Broadcast had not been accurate, which has never been established, Mr. Rather was not responsible for any such errors.

9. Thereafter, in a highly publicized effort to purge itself from responsibility and the political repercussions stemming from the Broadcast, shortly after George W. Bush was re-elected as President on November 2, 2004, CBS informed Mr. Rather that he was being terminated as anchor of the *CBS Evening News With Dan Rather*. Thus, the defendants sacrificed Mr. Rather's journalistic integrity by falsely blaming him for alleged errors in the Broadcast.

10. As a further part of the scheme to appease angry government officials, in addition to removing Mr. Rather as anchor of the *CBS Evening News With Dan Rather*, CBS thereafter minimized his staff, support, air time and public exposure, contrary to the terms of the contract it had signed with Mr. Rather. After his last broadcast as anchor of the *CBS Evening News With Dan Rather* on March 9, 2005, until his departure from CBS on June 16, 2006, Mr. Rather was first assigned as a correspondent at *60 Minutes II*, and then at *60 Minutes*. However, throughout the period, Mr. Rather was provided with few assignments, little staff, very little air time, and he was not permitted to cover important stories.

11. CBS -- through Mr. Moonves, Mr. Heyward, and executive Gil Schwartz -- made false representations to Mr. Rather to induce him to refrain from making public statements defending the Broadcast and his personal reputation. Defendants and others continuously and falsely assured Mr. Rather that CBS intended to fully use his talents in the near future, that his reputation would be repaired and, critically, that his contract would be extended. In reliance upon such representations, which defendants knew were false, and out of a sense of deep loyalty to CBS News, Mr. Rather complied with these requests throughout the almost two-year period between the Broadcast and his departure from CBS, during which time Mr. Rather refrained from defending the Broadcast or himself, as did CBS and defendants, despite their knowledge that the Broadcast was accurate. However, throughout this period, others at CBS made disparaging public statements concerning Mr. Rather and the Broadcast, which statements defendants did not discourage or disavow.

12. At all times relevant herein, CBS's parent company, Viacom, and its Chief Executive Officer, Sumner Redstone, considered it to be in its corporate interest to curry favor with the Bush administration by diminishing Mr. Rather's stature and reputation. At a Viacom

board meeting after the Broadcast, Mr. Redstone was reported to have become enraged that the Broadcast had hurt CBS in the eyes of the Bush administration, and exclaimed that Mr. Rather and anyone associated with him must go. Viacom and Mr. Redstone supported, encouraged, ordered and condoned the wrongful acts by defendants described herein.

13. The defendants' behavior constituted fraud and greatly damaged Mr. Rather, both through business injury in his chosen trade and profession and through injury to his personal reputation. Such wrongful acts also have damaged and diminished the independence and quality of CBS News and the important journalistic functions it performs.

#### **PARTIES**

14. Mr. Rather is a resident of the City, County and State of New York.

15. Defendant Leslie Moonves is a resident of both the City, County and State of New York, and of Los Angeles, California, and at all relevant times has been Chief Executive Officer of CBS, and is subject to this Court's jurisdiction pursuant to CPLR 301 and 302.

16. Defendant Andrew Heyward is a resident of the County of Westchester, State of New York, and at all relevant times until November 2005 was president of CBS News, a division of CBS.

#### **JURISDICTION AND VENUE**

17. Jurisdiction and venue are proper pursuant to CPLR §§ 301 and 503 because Mr. Rather is a resident of the City, County and State of New York.

18. This action is related to another case pending in this Court, *Dan Rather v. CBS Corporation*, Index No. 603121/07, pending before the Hon. Ira Gammerman (the "First Action"). Plaintiff brings this separate lawsuit so as to replead his fraud claim against individual

defendants Moonves and Heyward, who were previously dismissed from the First Action. The allegations herein have since been found to be sufficient in the First Action as against CBS.

### FACTS

#### Dan Rather

19. Mr. Rather first joined CBS News in 1962, after reporting in print and radio for twelve years. In the course of his career as a broadcast journalist he has received every major honor in his field, including literally dozens of Emmy Awards, numerous Peabody Awards, and an array of other honors and citations from numerous professional, educational, charitable, and social organizations. Over the more than four decades he has spent at CBS, he has been involved in virtually all of the world's major news stories, including the assassination of John F. Kennedy, the wars in Vietnam, Yugoslavia, Afghanistan and both wars in Iraq, the fall of the Soviet empire, the Israeli-Palestinian conflict, and marathon reporting on 9/11/01 and the days that followed, just to name a few of the historical events he has covered. During his long tenure at CBS, he has interviewed nearly all of the major world leaders, and every American president since and including Dwight Eisenhower. Mr. Rather's extensive biography, replete with exclusive interviews with major newsmakers (including interviews with Saddam Hussein before both gulf wars), and groundbreaking reporting, is too lengthy to include here.

20. Prior to his employment at CBS, Mr. Rather served as reporter, anchor and news director for a CBS-affiliated local station in Houston, Texas. There, he was awarded, in the same year, both the prestigious Dupont and Ohio State University national awards for journalistic excellence, rarely awarded for local news coverage. These were awarded to Mr. Rather for his brave and ground-breaking coverage of historic Hurricane Carla in 1961, his coverage of which resulted in his being hired by the CBS Network.

21. Mr. Rather has held different posts at CBS over the years, his most notable position being the Anchor and Managing Editor of the *CBS Evening News With Dan Rather*, CBS's flagship daily national news broadcast, for 24 years, from March 9, 1981 to March 9, 2005. Mr. Rather started at CBS as chief of its Southwest Bureau in Dallas, and was soon appointed chief of the Southern Bureau in New Orleans. He later served as CBS News Bureau Chief in London and Saigon, and was the White House correspondent during the Johnson, Nixon and Ford administrations. Since 1981, he has made regular contributions to *CBS Radio News*. As explained more fully below, CBS abruptly cancelled Mr. Rather's radio appearances in November 2004. Mr. Rather also anchored and reported for the magazine show *48 Hours* from its inception in 1988 through September 2002. He has also served as a major correspondent for *60 Minutes* and *60 Minutes II*.

22. During his years as Anchor and Managing Editor of the *CBS Evening News With Dan Rather*, Mr. Rather enhanced his reputation as one of the leading investigative journalists of his time by pioneering the concept of the "reporter/anchor." Unlike prior anchors, or the evening news anchors on competitor networks, through extremely hard work, extensive travel, and often with considerable personal danger, Mr. Rather continued to break stories, report "hard news," and cover the major stories of the day from around the world -- wherever they were taking place. Mr. Rather's work as a reporter/anchor continued consistently throughout his tenure as Anchor, including through on-the-scene coverage of the wars in Afghanistan and Iraq through the summer of 2004.

23. Throughout his career, Mr. Rather has earned and enjoyed a reputation for journalistic excellence and independence, and is the author of seven books covering diverse

aspects of his work. That reputation, and the compensation he is able to derive from his business and profession, were seriously damaged by the defendants' wrongful acts described here.

**Employment Agreement**

24. Since December 30, 1979, Mr. Rather has been employed by CBS pursuant to a Staff Correspondent Agreement, as amended by numerous renewals and amendments, the most recent of which occurred on April 10, 2002 and July 24, 2002 (collectively, the "Agreement"). The Agreement, by its terms, expired on November 25, 2006, unless renewed prior to that date.

25. The Agreement at all times provided, *inter alia*, that Mr. Rather would be employed as the "Anchor" or "Anchorman" for the *CBS Evening News With Dan Rather*, as well as a "Staff Correspondent, Reporter, Analyst, Narrator" and a host of other news-related positions. Throughout his tenure as the Anchor for *The CBS Evening News With Dan Rather*, Mr. Rather also regularly performed services for other CBS news-related programs, including *CBS Radio News*, *60 Minutes*, *60 Minutes II*, *48 Hours*, and Anchor for major news events occurring anywhere in the world.

26. It is well known in the television industry that "air time" is the life blood for television news personalities, and Mr. Rather's Agreement recognized the importance of Mr. Rather's right to optimum exposure. It was important to CBS that Mr. Rather cooperate in enhancing such exposure so that CBS would benefit from Mr. Rather's experience in, and reputation for, covering the news. Thus, as originally worded, the Agreement provided that "CBS shall make efforts to increase [Mr. Rather's] exposure on television." Agreement, 12/30/79, ¶ 1(i). The amendments recognized and incorporated that same obligation; the April 10, 2002 amendment, for example, required CBS to assign Mr. Rather to cover "major breaking news events, conventions, elections, election campaigns, primaries and/or space shots."

Agreement, 4/10/02 extension, ¶ 1(c). Even after Mr. Rather was no longer Anchor of the *CBS Evening News With Dan Rather* (discussed more fully below), the Agreement required CBS to utilize Mr. Rather's services on a "full-time" and "regular basis" throughout the remainder of the Agreement. Agreement, 4/10/02 extension, ¶ 1(f).

27. The Agreement provides that CBS shall have the right to remove Mr. Rather as sole Anchor of the *CBS Evening News With Dan Rather* on or prior to December 31, 2002 only with Mr. Rather's consent, and after December 31, 2002, without Mr. Rather's consent. Agreement, 4/10/02 extension, ¶ 1(b)(e).

28. The Agreement further provides that, in the event CBS removes Mr. Rather as sole Anchor of the *CBS Evening News With Dan Rather* after December 31, 2002 – and consistent with its obligation to ensure that Mr. Rather received optimum "air time" for the benefit of both CBS and Mr. Rather – CBS was, *inter alia*, obligated to Mr. Rather as follows:

... CBS shall assign Artist as a full-time Correspondent on 60 MINUTES II and Artist shall continue to receive first billing. It is understood, however, if 60 MINUTES II is cancelled after Artist is removed as Anchor of THE CBS EVENING NEWS [as it was in May 2005] and Artist had been assigned as a Correspondent on 60 MINUTES II as set forth above, CBS shall assign Artist to perform services on a regular basis as a Correspondent on 60 MINUTES.

Agreement, 4/10/02 extension, ¶ 1(f).

29. The Agreement further provides that if CBS fails to assign Mr. Rather as specified, it must thereupon pay Mr. Rather the remainder of his weekly compensation, which under the Agreement amounts to base pay of \$6 million a year through the expiration of the Agreement, November 25, 2006, plus other amounts, at which time the Agreement is at an end. Agreement 4/10/02, ¶1(g).

30. A subsequent amendment to the Agreement further clarified and defined the parameters of Mr. Rather's expected work for, and exposure on, *60 Minutes* and *60 Minutes II*. While the April 10, 2002 Amendment required that Mr. Rather be assigned as a full-time Correspondent on *60 Minutes II* (as long as it was not cancelled), under the subsequent July 24, 2002 Amendment, the Agreement provided, as amended, that "Dan's services shall be split evenly between 60 MINUTES and 60 MINUTES II." Agreement, 7/24/02 Amendment, ¶ 3.

31. Mr. Rather insisted on this amendment, to which CBS agreed, because of his interest in ensuring that CBS be required to provide him with exposure and with the continuing opportunity to be a prominent investigative journalist, if no longer serving as Anchor, through coverage of the "hard news" stories more commonly aired on *60 Minutes*, a higher-rated news program and, at the time, more well known for its investigative pieces than *60 Minutes II*.

32. Mr. Rather was not only a valued four-decade employee of CBS, but for twenty-four years he occupied the most visible spot at CBS, the sole anchor of its flagship broadcast, the *CBS Evening News With Dan Rather*. For many years, Mr. Rather was the face of CBS News. Each weekday Mr. Rather delivered the news to millions of viewers under the CBS "eye" logo. He also covered major news events during his long tenure as anchor. The image of CBS and Mr. Rather was inextricable – Mr. Rather looked to CBS to promote him, and CBS looked to Mr. Rather to promote it.

#### **The Summer 2004 Negotiation and the Promise of Good Faith Negotiations**

33. During the course of their decades-long relationship, Mr. Rather and CBS historically began contract renewal negotiations approximately two years prior to the expiration date of a then-existing agreement. It was the parties' custom and practice that Mr. Rather's agent, Richard Leibner, would meet with the president of CBS News and enter into an oral

agreement on the major provisions of Mr. Rather's contract extension. Thereafter, the agreement would be reduced to writing, and executed by the parties.

34. In the Summer of 2004, Mr. Leibner began contract renewal negotiations with defendant Andrew Heyward. Prior thereto, discussions had been held concerning the possibility that Mr. Rather would continue as anchor of the *CBS Evening News With Dan Rather* until March 9, 2006, which would represent 25 years of service in that position, and that thereafter he would serve as a full-time Correspondent on *60 Minutes* and/or *60 Minutes II* in accordance with the terms of the Agreement. The discussions produced a mutually acceptable proposal that contemplated, beyond the required payment through the remainder of the existing Agreement (November 25, 2006), 19 months at \$4 million per year as a full-time correspondent (until June 2008), and \$2 million per year for the next two years in a more limited capacity.

35. In sum, the understanding that emerged from these discussions was a contract extension until at least *June 2010*, with a total base compensation of approximately \$24 million, including the \$12 million already due under the Agreement through November 25, 2006.

36. Although this agreement was not reduced to writing, as discussed in detail below, by letter dated November 22, 2004, Mr. Moonves promised that beginning in November 2005, CBS would engage in "good faith negotiations" regarding Mr. Rather's contract extension "along the lines of our prior discussions of that possibility earlier this year," referencing these Summer 2004 negotiations.

#### **Abu Ghraib**

37. In late April 2004, Mr. Rather, as Correspondent, and Mary Mapes, a veteran producer, broke a news story of national urgency on *60 Minutes II* – the abuse by American military personnel of Iraqi prisoners in the Abu Ghraib prison. The story, which included

photographs of the abusive treatment of prisoners, consumed American news media for many months.

38. Despite the story's importance, and because of the obvious negative impact the story would have on the Bush administration with which Viacom and CBS wished to curry favor, CBS management attempted to bury it. As a general rule, senior executives of CBS News do not take a hands-on role in the editing and vetting of a story. However, CBS News President Andrew Heyward and Senior Vice President Betsy West were involved intimately in the process of editing and vetting the Abu Ghraib story. While Ms. West approved the story for airing, Mr. Heyward overruled her and, for weeks, he refused to grant permission to air the story. As Mr. Rather and Ms. Mapes provided each requested verification, Mr. Heyward continued to "raise the goalposts," insisting on additional substantiation, including that CBS wait for "the government's side" of the story, which had been requested more than once, but not provided.

39. Even after obtaining nearly a dozen, now notorious, photographs, which made it impossible to deny the accuracy of the story, Mr. Heyward continued to delay the story for an additional three weeks. This delay was, in part, occasioned by acceding to pressures brought to bear by government officials urging CBS to drop the story or at least delay it. As a part of that pressure, Mr. Rather received a personal telephone call from General Richard B. Myers, Chairman of the Joint Chiefs of Staff, urging him to delay the story.

40. Only after it became apparent that, due to the delay, sources were talking to other news organizations and that CBS would be "scooped," Mr. Heyward approved the airing of a watered-down version of the story for April 28, 2004. Even then, CBS imposed the unusual restrictions that the story would be aired only once, that it would not be preceded by on-air promotion, and that it would not be referenced on the *CBS Evening News With Dan Rather*.

**The Bush Air National Guard Story**

41. For a number of years prior to 2004, several news organizations and reporters, including Ms. Mapes, had been investigating the circumstances surrounding President George W. Bush's limited service in the TexANG during the time of the Vietnam War. Although lacking definitive evidence, claims abounded that President Bush had used his father's political connections first to preferentially gain entry into the TexANG and thus avoid service in Vietnam, and thereafter to evade much of his obligation to the TexANG.

42. In late August 2004, Ms. Mapes informed CBS and Mr. Rather that she expected to secure evidence with respect to both aspects of this important story. With respect to President Bush's entry into the TexANG, Ben Barnes, the former Speaker of the Texas House of Representatives, was prepared to state publicly that he had arranged President Bush's acceptance into the TexANG. With respect to President Bush's failure to perform his TexANG duty, Ms. Mapes told CBS and Mr. Rather that she expected to receive, from another source, contemporaneous documents written by President Bush's commanding officer, Lt. Colonel Jerry B. Killian ( the "Documents").

43. Ms. Mapes received the Documents, which would later become the focus of much controversy, in late August 2004. Ms. Mapes and an assistant received the Documents confidentially from Col. Bill Burkett, who worked at Camp Mabry, Austin, Texas, the headquarters of the TexANG and repository of Texas National Guard records. They confirm that President Bush failed to perform his duty in the TexANG, that he disobeyed a direct order from his commanding officer, refused to take a physical exam, and did not complete his military commitment.

44. In late August 2004, Ms. Mapes had informed Mr. Rather that the Barnes interview and the receipt of the Documents could be imminent. Until the early morning of

September 3, Mr. Rather was covering the Republican National Convention in New York, which entailed 16 hour workdays. Mr. Rather briefly spoke to Mr. Barnes on Wednesday September 1. The Convention ended near midnight on Thursday, September 2, and early on Friday morning Mr. Rather flew to Florida to cover Hurricane Frances. While covering the hurricane, Andrew Heyward, president of CBS News, telephoned Mr. Rather to discuss the Bush TexANG story. Mr. Heyward instructed Mr. Rather to concentrate on hurricane coverage, stating that he would personally supervise the vetting of the Bush TexANG story and Documents, as he had done with the Abu Ghraib story. Further, he assured Mr. Rather that he would assign other senior CBS News personnel to vet the story, including Betsy West.

45. Ms. Mapes called Mr. Rather on Sunday, September 5, to ask him to leave immediately for Texas to interview Lieutenant Robert Strong, who knew the people involved in the story and was familiar with the operations of the TexANG during the 1970s. Mr. Rather first saw the Documents while he and Ms. Mapes were waiting for a connecting flight to Austin, Texas. He understood that the Documents, memos from Bush's supervisor, Lt. Col. Killian, came from a confidential source, but also believed that the Documents were being vetted by experts. Mr. Rather interviewed Lt. Strong that night, and then flew back to New York.

46. The following day, Labor Day, Monday, September 6, Mr. Rather focused on his duties as Managing Editor and Anchor of the *CBS Evening News With Dan Rather*, concentrating on former President Clinton's heart bypass surgery, which occurred that day. Mr. Rather did some narration for the Broadcast in the early afternoon, and after the evening news show, he interviewed a document analyst, Marcel Matley.

47. On Tuesday, September 7, Mr. Rather, in addition to his daily duties, interviewed Colonel David H. Hackworth, a highly decorated and knowledgeable military expert, and Ben

Barnes. Col. Hackworth expressed his opinion, based on their form and substance and his own vast experience, that the Documents were authentic, and he concluded that President Bush had been insubordinate and AWOL, and would have been treated more harshly had he not been politically well-connected. Senior Vice President Betsy West, Executive Producer Josh Howard, Senior Broadcast Producer Mary Murphy, and two lawyers from CBS corporate headquarters, all worked closely with the Mapes team as they produced the story.

48. On Wednesday, an interview with Dan Bartlett, President Bush's Director of Communications, was conducted by CBS Correspondent John Roberts. Mr. Bartlett did not question the authenticity of the Documents. He stated that the story was old news and that the Documents merely corroborated the well-known story.

49. Mr. Rather played largely a supervisory role in the production and vetting of the Broadcast. Mr. Heyward directed Mr. Rather to devote his time to covering other major news events that were ongoing during the days leading up to the airing of the story — Former President Clinton's heart surgery, Hurricane Frances, and the Republican National Convention in New York. Mr. Heyward assured Mr. Rather that he, Mr. Heyward, was personally involved in overseeing the production and vetting of the story. Moreover, as in the case of the Abu Ghraib story, CBS took the unusual step of having its senior executives, Senior Vice President Betsy West, Executive Producer Josh Howard, and Senior Broadcast Producers Mary Murphy and Esther Kartiganer, and Mr. Heyward himself, oversee the production and vetting of the story. In addition, two CBS in-house attorneys were involved in vetting the story.

50. Mr. Rather was assured by Mr. Heyward and the production team that all the documents had been vetted and were authentic, and on September 8, 2004, CBS aired the Bush

Air National Guard Story on *60 Minutes II*, after it had been approved by Mr. Heyward, Ms. West, Mr. Howard, Ms. Murphy, Ms. Kartiganer, and the CBS in-house attorneys.

### **The Broadcast Aftermath**

51. Immediately after the Broadcast, internet bloggers began to attack the authenticity of the Documents. Many also accused Mr. Rather of being personally biased against President Bush. The next day some elements of the mainstream press also began questioning the authenticity of the Documents. Few, if any, of the blogs or media stories disputed the substance of the story that Bush received preferential treatment in connection with his Air National Guard Service.

52. For several days, Mr. Heyward and CBS News determined to stand by the story. Mr. Heyward and CBS public relations executive Gil Schwartz directed Mr. Rather to defend the story in response to media queries, using "talking points" prepared by Ms. Mapes.

53. Mr. Heyward also directed Mr. Rather not to respond to the accusations of bias made against him personally, assuring Mr. Rather that CBS would defend and stand by him (the first of many "CBS Will Defend Rather" representations). Relying on these assurances, Mr. Rather complied and did not respond to personal attacks on his journalistic integrity.

54. Also at CBS's instruction, Mr. Rather re-interviewed the document examiner, Marcel Matley, for the September 10 broadcast, for which Ms. Mapes prepared text defending the Documents. On September 13, 2004, again at CBS's instruction, Mr. Rather interviewed other document experts to defend the story. He was given more talking points by CBS to respond to media questions. On Wednesday September 15, 2004, also at Mr. Heyward's direction, Mr. Rather interviewed Lt. Col. Killian's secretary, Ms. Knox, who claimed she had not typed the documents, but believed their content to be true.

55. On Saturday, September 18, 2004, Mr. Rather traveled to Dallas, Texas with Ms. West to re-interview Bill Burkett. Following the interview, Mr. Rather traveled to Austin, Texas to visit family. On September 19, 2004, Mr. Heyward called Mr. Rather and insisted that he return to New York for a meeting in Mr. Heyward's office.

56. Mr. Rather met with Mr. Heyward in Mr. Heyward's office in the evening on September 19, 2004. Mr. Heyward informed Mr. Rather that a decision had been made that CBS would be reversing its position and issuing an apology for CBS's handling of the Broadcast that Mr. Rather would read on the air the following evening. Mr. Rather responded that he disagreed with the decision, but Mr. Heyward stated that they had passed the point of discussion. Although Mr. Heyward himself had undertaken personal responsibility for the vetting of the story, he urged Mr. Rather to include a personal apology in what would be read the following evening.

57. To induce Mr. Rather into agreeing to read the apology, and to include in it a personal apology, Mr. Heyward made further "CBS Will Defend Rather" representations, assuring Mr. Rather again that CBS would stand by and defend him against all attacks. But now, Mr. Rather was being induced into not defending the story publicly. To ensure Mr. Rather's cooperation with this change, Mr. Heyward also represented to Mr. Rather that he would appoint an independent panel to investigate the story underlying the Broadcast, the results of which would be made public, assuring Mr. Rather that the panel would consist of people with impeccable credentials, who were unimpeachable, and who know the business (the "Independent Investigation" representation).

58. During the next day, in telephone calls between Mr. Schwartz and Mr. Rather, Mr. Schwartz buttressed what Mr. Heyward had represented the prior evening -- that CBS would

defend Mr. Rather and would appoint an outside panel to conduct an independent investigation into the story underlying the Broadcast.

59. Despite his own personal feelings that no apology from him was warranted, Mr. Rather read the apology on the *CBS Evening News With Dan Rather* on September 20, 2004. Mr. Rather also did not publicly defend the story or himself. Mr. Heyward also directed Mr. Rather to give an interview to the local New York City CBS affiliate, WCBS-TV, and to again express Mr. Rather's personal apologies for the "mishandling" of the Bush TexANG story. Mr. Rather expressed his opinion that the interview was inappropriate, and that further apologies were not warranted, but, again, he complied with the instruction, relying on the representations CBS had made.

60. On September 20, 2004, CBS issued a public statement announcing that it would be commissioning an independent review of the process by which the report was prepared and broadcast, that the names of the people conducting the review would be announced shortly, and that their findings would be made public (another "Independent Investigation" representation).

61. The "CBS Will Defend Rather" and "Independent Investigation" representations, made to induce particular actions by Mr. Rather, created liabilities that were separate, apart from, and collateral to CBS's contractual obligations to Mr. Rather under the Agreement. Under the Agreement, Mr. Rather was Managing Editor of the *CBS Evening News With Dan Rather* and, as Managing Editor, he was entitled to "participate substantially in management decision-making with respect to that program." (Agreement, 12/30/79, 1(h)). He disagreed with Mr. Heyward's decision to abandon defending the truth of the story underlying the Broadcast, but was induced to refrain from speaking out in defense of the Broadcast and himself through these false representations.

62. When Mr. Rather relied upon the “CBS Will Defend Rather” and “Independent Investigation” representations, and agreed to apologize, he did not know that CBS and Viacom were already considering how to appease angry government officials in a manner that could injure Mr. Rather. For example, CBS and defendants did not disclose, and Mr. Rather did not know, that Mr. Redstone had been enraged that the Broadcast had hurt CBS in the eyes of the Bush Administration, nor that he had exclaimed to the Viacom Board of Directors that Mr. Rather “had to go.” These facts, material to his determination on how to respond to the mounting attacks on the Broadcast, CBS News, and him personally, were concealed from Mr. Rather.

63. By coercing Mr. Rather publicly to apologize and take responsibility for the airing and vetting of the story, CBS and defendants intentionally caused the public and the media to attribute CBS’s alleged bungling of the episode to Mr. Rather. This fueled elements of the media who dubbed the episode “Rathergate.”

#### **The “Independent” Investigation Is Biased**

64. On or about September 22, 2004, CBS publicly announced the appointment of a so-called “Independent Review Panel” (“Panel”), repeating Mr. Heyward’s representations to Mr. Rather of September 19, 2004 (another “Independent Investigation” representation).

65. In fact, the Panel was not selected by CBS with a desire that it be independent or unbiased. It was designed to give the appearance of fairness, when in fact its conclusions were preordained to find fault with the Broadcast and those persons responsible for it, and provide a basis for CBS to: diminish the career and reputation of such persons; divert public attention from the accurate facts reported in the Broadcast concerning President Bush’s service (and lack

thereof) in the TexANG during the Vietnam War; and enable CBS and Viacom to curry favor with the White House by demonstrating its intent to minimize CBS News' criticism thereof.

66. One of the two members of the Panel was Richard Thornburgh, former Republican Governor of Pennsylvania and U.S. Attorney General during the administration of the first President Bush. While he was Attorney General, Mr. Rather reported critically on certain of his activities. Mr. Thornburgh conducted an unsuccessful election to be Republican U.S. Senator from Pennsylvania in a campaign supported by President George H. W. Bush. The second member of the Panel was Louis D. Boccardi, former Chief Executive Officer of the Associated Press, also someone with close ties to President George H. W. Bush. CBS paid all fees and expenses for the Panel and its staff.

67. Also, following the appointment of the Panel, Mr. Redstone told Time Magazine that Viacom and CBS would "wait for the report to try to determine whether there would be any consequences to anybody at CBS News." In that same interview, Mr. Redstone reiterated his view that he supported a Bush victory in the upcoming presidential election, which would be beneficial to Viacom.

68. As Mr. Redstone had made clear, it was important to Viacom to have good relations with the Oval Office. The appointment of a man with Mr. Thornburgh's background reflected CBS's desire to appoint a panel that would placate the Bush administration, while neatly laying the "blame" for the story on certain employees.

69. When Mr. Rather learned that CBS had appointed Mr. Thornburgh to the Panel, whose connections to the Bush family cast doubt upon Mr. Heyward's representation a few days earlier that "unimpeachable" persons would be appointed, Mr. Rather became concerned. Shortly after the announcement of the composition of the Panel, Mr. Rather and his agent, Mr.

Leibner, met with Mr. Moonves in Mr. Moonves' office at Viacom. During that meeting, and in a separate meeting with Mr. Rather alone, Mr. Rather again questioned the direction CBS was taking.

70. In response, Mr. Moonves made additional "Independent Investigation" and "CBS Will Defend Rather" representations. Mr. Moonves stated that the Panel had been selected with care, that they would be fair in their investigation, and that the Panel was necessary for CBS to obtain an investigation that was accurate and credible. Mr. Moonves also stated that he and CBS cared about Mr. Rather and his future at CBS, that they wanted and intended to preserve Mr. Rather's career at CBS because he was important to CBS, but that it was important that Mr. Rather be on board with CBS's strategy to get through the situation. Mr. Moonves further stated that there likely would be a splash when the Panel issued its report, but that after that, CBS would turn its attention to Mr. Rather and his need to restore his reputation.

**CBS Never Fully Investigates The Story Underlying The Broadcast**

71. Also at the time the appointment of the Panel was announced, CBS News President Andrew Heyward instructed the entire CBS News department to curtail any further investigation of the story underlying the Broadcast. Mr. Rather reminded Mr. Heyward that numerous leads remained open which should be investigated, and stated that if CBS News would not continue to investigate them to obtain the record to support the story underlying the Broadcast, he would personally retain a private investigator to pursue them.

72. Mr. Heyward urged Mr. Rather to refrain from taking such action. He informed Mr. Rather that CBS News would retain a private investigator to thoroughly pursue all leads, and that all information uncovered by such investigator would be made available to Mr. Rather (the "Full Investigation/ Sharing" representation). The "Full Investigation/ Sharing" representation,

made to induce Mr. Rather into refraining from taking particular steps to defend the truth of the story underlying the Broadcast, created liability at CBS separate, apart from, and collateral to its obligations to Mr. Rather under the Agreement. In reliance on Mr. Heyward's aforesaid promise, Mr. Rather did not retain any investigator.

73. With the representations of Mr. Moonves and Mr. Heyward following the announcement of the composition of the Panel, Mr. Rather was induced to believe that CBS was going to investigate the truth of the story underlying the Broadcast and, relying on these representations, refrained from undertaking an investigation himself.

74. In late September 2004, CBS retained SafirRosetti, a private investigation firm, which in turn hired Erik Rigler, a former FBI Agent and private investigator resident then in San Antonio, Texas, to conduct the investigation of the matters discussed in the Broadcast.

75. In accordance with CBS's instructions, Ms. Mapes and her assistant, Mike Smith, provided Mr. Rigler with all materials and leads to enable Mr. Rigler to conduct his investigation.

76. From late September 2004, until on or about October 29, 2004, when he was instructed by CBS to terminate his investigation, Mr. Rigler interviewed numerous persons with knowledge concerning President Bush's TexANG tenure and records.

77. In October 2004, Mr. Rigler was briefly interviewed on the telephone by attorneys for the Panel. They asked few questions regarding his conclusions concerning the authenticity of the Documents or the accuracy of the facts in the Broadcast and appeared more interested in whether Mr. Rigler had uncovered derogatory information concerning Mr. Rather or Ms. Mapes, as to which he had no information.

78. Mr. Rigler was instructed to report to CBS through Linda Mason, a CBS News executive. In late October 2004, Mr. Rigler reported to Ms. Mason, both orally and in writing, that, after following all the leads given to him by Mr. Mapes, he was of the opinion that the Killian Documents were most likely authentic, and that the underlying story was certainly accurate.

79. Mr. Rigler was never interviewed by either Panel member either in person or on the telephone, and was never personally interviewed by anyone involved with the Panel.

80. Despite Mr. Heyward's promise to Mr. Rather that Mr. Rigler's reports and findings would be made available to Mr. Rather, they were withheld from him. To this day, CBS has refused to allow Mr. Rather or his representatives to communicate with Mr. Rigler. CBS has similarly instructed Mr. Rigler not to communicate with Mr. Rather or his representatives.

**The Panel Improperly Assumes The Broadcast Was Erroneous**

81. The Panel conducted its interviews in secret, attended only by Panel members and staff. No verbatim transcripts or recordings were made. Interview notes or memoranda were not made public or provided to Mr. Rather or other subjects of the investigation, and documents examined by the Panel were never released to them. Mr. Rather and others were denied the right to have attorneys attend interviews of others, or to present witnesses to the Panel.

82. On January 5, 2005, the Panel published its 224 page report and findings. It found, *inter alia*, that the vetting process of the Broadcast was inadequate, and that those charged with vetting the story, which did not include Mr. Rather, had not sufficiently questioned Ms. Mapes' basis for her confidence in the authenticity of the Documents.

83. Significantly, the Panel never concluded that the Killian Documents were forgeries; or that the substance of the Documents was inaccurate; and it did not question the

underlying critical fact that President Bush had received preferential treatment in connection with his acceptance and service in the TexANG. Despite finding no such inaccuracies, the Panel faulted CBS management, as well as Mr. Rather, for supporting the authenticity of the Documents for too long.

84. Despite CBS's retaining a partisan Panel, the Panel found *no wrongdoing* by Mr. Rather in connection with the production of the Broadcast. The only issue the Panel raised concerning Mr. Rather's conduct related to his public statements in the immediate aftermath of the Broadcast, which it knew to have been written by, and made at the direction of CBS senior management, Mr. Heyward and Mr. Schwartz. The Panel found no basis to accuse Mr. Rather, or anyone else involved in the Broadcast, of having a political bias.

85. The Panel report makes no mention whatsoever of Erik Rigler, the investigator hired by CBS, who conducted his investigation in Texas, obtained first hand accounts related to the story, and reported to CBS and the Panel his conclusions that the Killian Documents were probably authentic, and that the underlying facts in the Broadcast were certainly accurate. This conspicuous omission is revealing — neither CBS nor the Panel intended to give any credence to these facts.

86. The Panel Report was not the "independent investigation" CBS represented to Mr. Rather would be undertaken. It did not come close. It was nothing more than a public relations gimmick to quell the politicized critics of a story concerning their candidate for President of the United States until after the election. Neither the Panel, nor CBS, even attempted to investigate the central issue at stake when any news report is challenged -- the truth of the Broadcast's underlying story, here, that through his father's political connections, President George W. Bush preferentially gained entry into the TexANG and evaded his obligation to the TexANG.

### **CBS Removes Mr. Rather From The Anchor Chair**

87. CBS did not even wait for the Panel Report to be issued before taking employment action against Mr. Rather. Earlier, shortly after President Bush was elected to a second term, Mr. Rather learned from Mr. Leibner that Mr. Moonves had contacted him and stated that CBS would be unilaterally removing Mr. Rather as sole Anchor of the *CBS Evening News With Dan Rather*. Mr. Moonves also stated that the contract extension for Mr. Rather discussed in August 2004 between Mr. Moonves and Mr. Leibner was being taken off the table. A meeting with Mr. Rather and Mr. Leibner was scheduled on or about November 8, 2004, less than a week after the election, in Mr. Moonves' offices, where Mr. Rather's future at CBS was to be discussed.

88. Also during the week following the election, Harvey Nagler, the CBS officer in charge of the CBS Radio News, who reported to Mr. Heyward, went to Mr. Rather's office and told him that he had been instructed that Mr. Rather was not to appear on radio until further notice. Mr. Nagler told Mr. Rather that the reason he was no longer to do the radio broadcasts was because of pressure from the "right-wing."

89. Despite CBS's highly publicized efforts to appear neutral by appointing the Panel to investigate the Broadcast and its aftermath, and notwithstanding the assurances of Mr. Heyward, Mr. Schwartz, and Mr. Moonves to Mr. Rather that CBS would support and defend him, CBS removed Mr. Rather from his 24-year position as Anchor of the *CBS Evening News With Dan Rather* two months before the Panel issued its report. This action also directly contradicted Mr. Redstone's public pronouncement that CBS would "wait for the report to try to determine whether there would be any consequences to anybody at CBS News."

90. From November 8, 2004 until November 22, 2004, Mr. Rather and Mr. Leibner discussed the circumstances under which CBS would announce Mr. Rather's removal from the

Anchor chair, and the status of his negotiations over a contract extension, with Mr. Moonves and Mr. Schwartz. In these discussions, CBS made two critical representations to Mr. Rather to induce Mr. Rather to cooperate with his early removal from the Anchor chair and to continue to refrain from making public comment about CBS's handling of the Broadcast and its aftermath.

91. First, Mr. Moonves threatened that either Mr. Rather cooperate with his early removal from the Anchor chair "on [his] own -- now" or CBS would announce it the same day the Panel's report would be issued, and represented that there was no way the Panel Report "won't be bad" for Mr. Rather (the "Panel Report Outcome" representation). Thus, CBS made it clear that if Mr. Rather did not support the decision publicly, his removal would appear tied to negative findings about Mr. Rather in the Panel Report. Of course, the Panel Report was not released to the public until January 10, 2005, some six weeks after CBS had represented its likely content to Mr. Rather. The Panel Report found no wrongdoing on the part of Mr. Rather in connection with the production of the story.

92. Second, Mr. Moonves ultimately agreed to reaffirm, in writing, that CBS would negotiate in good faith to extend his employment contract along the lines of the discussions in August 2004 (the "Contract Extension" representation). In a letter dated November 22, 2004, from Mr. Moonves to Mr. Leibner, Mr. Moonves wrote:

During our recent conversations regarding the coordination of Dan Rather's departure from the Anchor position at CBS Evening News, you raised the possibility of extending his contract. As part of Dan's transition, we have agree that, beginning November 24, 2005, CBS and Dan will engage in good faith negotiations, subject to CBS's business judgment on the substance of such negotiations, regarding an extension of his contract at CBS following expiration of his current contract, along the lines of our prior discussions of that possibility earlier this year. Dan will remain the Anchor of CBS Evening News through March 9, 2005 on a play basis, other than for cause.

93. Relying on these further representations, Mr. Rather agreed to remain silent as to the circumstances surrounding his premature ouster as Anchor of the *CBS Evening News With Dan Rather*, and agreed to support an announcement that he was leaving the Anchor chair as of March 9, 2005, which announcement was made on November 23, 2004.

94. The "Panel Report Outcome" and "Contract Extension" representations, made to further induce Mr. Rather's silence as CBS and defendants began to take punitive action against Mr. Rather's career, created liabilities that were separate, apart from, and collateral to contractual obligations CBS owed to Mr. Rather under the Agreement. CBS and defendants knew and understood that Mr. Rather wished to remain in the Anchor chair, wished to defend the truth of the story underlying the Broadcast, and was concerned about his career prospects if he did not do so and did not have a contract extension. With full knowledge of these concerns, CBS and defendants threatened to withhold an already promised contract extension to Mr. Rather.

95. To gain his capitulation to a demotion on CBS's terms, CBS and defendants led Mr. Rather to believe not only that he would have the opportunities guaranteed by his existing Agreement, but that if he continued to follow CBS's every instruction in the face of mounting criticism over the Broadcast and his association with it, he would not need to seek employment elsewhere when his existing contract expired in 2006, and that he would be compensated fairly for his continuing work on *60 Minutes* or *60 Minutes II* through at least June 2010.

96. By setting the date for further contract extensions a full year into the future, CBS and defendants ensured that they would retain a "trump card" that could be used to control Mr. Rather's conduct during the ensuing year. Thus, for example, while the Documents continued to be referred to as "fake," "bogus," or "forgeries," CBS never disputed, nor allowed Mr. Rather to

dispute, such characterizations in the press, even though the Panel had not found them to be forgeries.

97. Within ten days after the publication of the Panel Report, again after Mr. Rather expressed concerns about the manner in which the Broadcast had been investigated, Mr. Heyward made another "CBS Will Defend Rather" representation, reiterating that CBS intended to preserve and protect Mr. Rather's reputation in the wake of the Panel's findings.

#### **Post Anchor Period**

98. On March 9, 2005, Mr. Rather delivered his last broadcast as Anchor of the *CBS Evening News With Dan Rather*. In accordance with the terms of the Agreement, CBS was required to assign Mr. Rather as a "full-time correspondent" to split his time evenly between *60 Minutes* and *60 Minutes II*, or if at any time *60 Minutes II* was canceled, to assign him full time to *60 Minutes*. See Agreement 4/10/02 extension, ¶ 1(f); 7/24/02 amendment, ¶ 3. If at any time CBS failed to so utilize Mr. Rather, it was obligated to immediately pay him, in advance, all sums due under the Agreement as his weekly compensation through November 25, 2006 (the termination day of the contract), and he was then to be free to seek employment with any third party, without limitation. See Agreement 4/10/02 extension, ¶ 1(g).

99. Despite the representations and promises to Mr. Rather, CBS and defendants never had any intention of employing him on *60 Minutes II* or *60 Minutes* in accordance with the requirements of the Agreement or their representations. However, CBS also did not wish to immediately pay him the sums due him under the contract, allow him freedom to seek other employment where he might compete with CBS, or be free to comment frankly about, or investigate, the truth of the story underlying the Broadcast.

100. Before Mr. Rather was removed as Anchor, Mr. Heyward (as described above) and CBS News Executives Jeffrey Fager and Linda Mason, acting at the direction of defendants, represented to Mr. Rather that CBS intended at all times to fully utilize Mr. Rather's abilities, experience, and talents as a full time correspondent on *60 Minutes* and *60 Minutes II* (the "Fully Utilize Rather" representations). However, even before Mr. Rather left the *CBS Evening News With Dan Rather*, Mr. Fager and Mr. Heyward retreated from this position.

101. Mr. Fager informed Mr. Rather that beginning in March 2005, he would be devoting all of his services to *60 Minutes II*. He assured Mr. Rather that keeping him from working on *60 Minutes* would only be for a short period of time, but that he was needed to "save *60 Minutes II*" at the moment, and that if Mr. Rather was a "team player" he would agree to start on *60 Minutes* in the fall of 2005, when he would be on the air with *60 Minutes* just like the other correspondents. These representations were made in conversations with Mr. Fager in his office, in Mr. Rather's office, and in the hallways of *60 Minutes*' offices at 555 W. 57<sup>th</sup> Street.

102. From March 9, 2005 until May 2005, CBS nominally assigned Mr. Rather as a correspondent on *60 Minutes II*. In reality, CBS had already had decided to cancel *60 Minutes II*, or was in the process of deciding to cancel *60 Minutes II*, while Mr. Rather was stationed there, announcing the cancellation in May 2005. Although videotape of Mr. Rather did run on television on the lower-rated *60 Minutes II*, these appearances involved stories that already were completed, or near completion, before he was forced from the Anchor chair. Mr. Rather's efforts to gain approval for, or work on, investigative pieces, or "hard news" pieces, were thwarted.

103. When *60 Minutes II* was cancelled, Mr. Rather was nominally assigned to *60 Minutes*, but CBS only allowed him to function in a very limited capacity. He was provided with very little staff support, very few of his suggested stories were approved, editing services were

denied to him, and the broadcasts of the few stories he was permitted to do were delayed and then played on carefully selected evenings when low viewership was anticipated.

104. Throughout this period, Mr. Rather continuously was induced by CBS and defendants not to publicly discuss the Broadcast, or to take issue with CBS's refusal to allow him to work on investigative pieces or cover hard news, through additional false "Fully Utilize Rather" representations -- assurances that it would fully utilize his services and provide him with the opportunity to restore his public image as a preeminent television journalist, none of which it did. The "Fully Utilize Rather" representations, made to induce Mr. Rather to accept his initial assignment to *60 Minutes II* (instead of what the Agreement required) and to continue to follow CBS's and defendants' instructions not to respond to attacks on the Broadcast and him personally, created liabilities that were separate, apart from, and collateral to CBS's contractual obligations under the Agreement.

105. During this same period, other well-known CBS News figures, including Mike Wallace, Andy Rooney and Walter Cronkite, a member of the CBS Board of Directors and Mr. Rather's predecessor as Anchor of the *CBS Evening News*, made derogatory public statements concerning Mr. Rather. CBS did not discourage or respond to such statements and, by its actions and inactions, encouraged them.

106. During his long tenure at CBS, Mr. Rather was from time to time invited to appear as a guest on news programs for other networks, which further afforded Mr. Rather an opportunity for "air time", and to solidify his standing as one of America's premier television journalists for the mutual benefit of Mr. Rather and CBS. Following CBS's removal of Mr. Rather as anchor of the *CBS Evening News With Dan Rather*, CBS and defendants refused to

allow Mr. Rather to appear as a guest on other news programs, further keeping him off the air and preventing him from restoring his reputation.

107. After Mr. Rather was removed as Anchor of the *CBS Evening News With Dan Rather*, he continued to volunteer for other news assignments, including volunteering to travel to Louisiana to cover Hurricane Katrina in the Fall of 2005. Mr. Rather is the most experienced reporter in the United States in covering hurricanes. He began his career covering hurricanes and continued to report from hurricane-stricken areas throughout his long tenure at CBS, to much acclaim. CBS refused to send him to Louisiana to cover the disastrous Hurricane Katrina, thus furthering its desire to prevent Mr. Rather from making appearances as an investigative journalist on important news stories. Similarly, CBS refused to allow Mr. Rather any further travel to Iraq or Afghanistan to cover stories as he had covered them throughout his entire career -- as a traveling investigative journalist reporting hard news and the important stories of the day.

108. In November 2005, the time when Mr. Moonves had promised to resume contract negotiations with Mr. Rather in "good faith . . . along the lines of our prior discussions of that possibility earlier this year," Mr. Leibner approached Mr. Moonves and Sean McManus, Mr. Heyward's replacement as President of CBS News, to begin such negotiations. Both Mr. Moonves and Mr. McManus stated, however, that CBS was not interested in renewing Mr. Rather's contract beyond the November 2006 expiration date. CBS failed to enter into the "good faith negotiations" they had represented would take place in Mr. Moonves' letter of November 22, 2004.

109. In May 2006, Mr. Moonves and Mr. McManus informed Mr. Leibner that CBS wanted a "fresh start" and expressed their desire that Mr. Rather's contract be terminated before its November 2006 expiration date. Such termination was effected as of June 16, 2006.

110. Accordingly, during the period from March 9, 2005 to June 16, 2006, Mr. Rather was "warehoused" at CBS, not only in breach of his contract, but in breach of the obligations created by representations CBS and defendants had made to him consistently since the aftermath of the Broadcast. These breaches not only damaged Mr. Rather's reputation, but also damaged him in his trade and profession, both during his continuing employment with CBS and thereafter.

111. From March 9, 2005 to June 16, 2006, Mr. Rather was induced -- both through the expectation that his contract would be honored *and* through misrepresentations and promises not kept -- to remain at CBS and stay silent. He was unable to explore or pursue other business opportunities, including following up on a previously made offer to become the face of CNN (discussed below), accepting speaking engagements and book deals.

112. From June 16, 2006 to the present, Mr. Rather found that, as a result of CBS's and defendants' conduct and his reliance on their misrepresentations, the business opportunities that should have been readily available to Mr. Rather because of his skill, experience, status, and talents as an investigative journalist and television news personality -- qualities earned over a career spanning more than four decades -- were not available to him.

#### **The Business Injury To Mr. Rather In His Trade and Profession**

113. In the Spring of 2006, knowing that CBS had reneged on its promise to engage in good faith negotiations over a contract extension through 2010, Mr. Rather and Mr. Leibner began exploring future employment opportunities with other television networks.

114. Mr. Rather reached out first to CNN, a prominent news network that had sought to hire him to become the face of CNN in 1997. In 1997, Mr. Rather had been approached by Tom Johnson, CNN's Chief Operating Officer, who offered Mr. Rather a position as CNN's

main anchor, face, and voice of CNN -- to become for CNN what Mr. Rather had been for CBS News.

115. In Mr. Johnson's 1997 call, CNN offered Mr. Rather a ten year contract at \$6 million per year -- a longer period of employment than had ever been provided in any CBS contract, and at a significantly higher level of compensation. Thereafter, several executives from CNN and its parent, Time Warner, called Mr. Rather and later met with him in an effort to entice and convince him to leave CBS and join CNN. These executives included Mr. Johnson, Ted Turner (the founder of CNN and then Time Warner's Vice Chairman and head of Time Warner's cable networks division), and Time Warner CEO Gerald Levin.

116. Mr. Rather was close to accepting the CNN position and leaving CBS, but disputes over his existing CBS contract made it a possibility that he would be unable to appear on CNN for over a year while such contract issues were resolved. Mel Karmazan, then CEO of the CBS Station Group (overseeing the network's radio and television properties), stated that he wanted Mr. Rather to remain at CBS and agreed to match CNN's salary offer of \$6 million per year and extend his existing contract.

117. After Mr. Rather advised CNN that he was unable to accept its offer, Mr. Turner told Mr. Rather that he understood the situation and that Mr. Rather should contact him at any point in the future if he wanted to "come on board." Following the CNN offer, when Mr. Rather ran into Tom Johnson and Ted Turner at industry events, the meetings were always cordial -- at one, Mr. Turner commented that he always regretted being unable to hire Mr. Rather to become the face of CNN.

118. With this background, in the Spring of 2006, Mr. Leibner arranged for Mr. Rather to meet with Jonathan Klein, then President of CNN, to discuss employment opportunities. They

met for lunch at San Domenico, an Italian restaurant near Columbus Circle in Manhattan. During the luncheon, Mr. Klein indicated that he was interested in exploring the possibilities, but Mr. Rather sensed that he did not have the enthusiasm exhibited by CNN in the past. Instead of considering Mr. Rather for the prominent role that had been discussed previously (a role he would still have been serving had he accepted the ten year contract offer in 1997), Mr. Klein discussed only a far more limited role. While admitting it was not formed in his mind completely, Mr. Klein suggested the idea of a new weekly interview program in which Mr. Rather would take a point of view on current issues, and suggested that perhaps Mr. Rather could sit in occasionally as a sometimes substitute on the Larry King show when Mr. King was on vacation or otherwise unavailable.

119. As the lunch went on, Mr. Klein conceded that CNN might have reservations about hiring Mr. Rather because of what he vaguely referred to several times as "the situation with CBS." Mr. Rather and Mr. Leibner had known for some time that there was a risk that the industry would not understand why CBS, and Mr. Moonves specifically, had allowed Mr. Rather's reputation and standing in the industry to be diminished in the wake of the Broadcast and its aftermath. Thus, Mr. Rather understood Mr. Klein to be referring to his perception in the industry and with the public as a result of the Broadcast, its aftermath, and the manner in which he was treated by CBS thereafter -- *i.e.*, removed from the Anchor chair, silenced, and publicly criticized.

120. Mr. Rather's understanding of the meaning being conveyed by Mr. Klein was confirmed when, after the lunch meeting, in a follow up call from Mr. Leibner to Mr. Klein, Mr. Leibner was informed that CNN was not interested in hiring Mr. Rather in any capacity. Mr. Klein was reluctant to volunteer the reasons why CNN had no interest. Mr. Leibner, however,

pressed for an explanation. Mr. Klein indicated that he had talked to his superiors and it was decided that hiring Mr. Rather was too risky. Mr. Leibner followed up with Mr. Klein on two or three occasions, asking whether there was a way he could turn Mr. Klein around on the subject of hiring Mr. Rather. These additional calls were unavailing.

121. It was common knowledge in the industry that, during the time immediately following the Broadcast, CNN was in great need of a new anchor and public face for its news operations. At that time, Mr. Rather was more than capable of publicly explaining his role in the Broadcast, defending the truth of the story, and explaining why the challenges to the Documents were unfair and represented only a part of the story. Mr. Rather could have obtained a lucrative, multi-year contract with CNN at that time. Roughly two years later, having been misled into remaining silent and unfairly taking the brunt of the blame for misconceptions about the Broadcast, CNN's interest in hiring Mr. Rather obviously had declined dramatically. During the intervening period, in February 2006, CNN had, for example, hired CBS correspondent John Roberts, currently serving as co-anchor of its morning program.

122. Also during the Spring of 2006, Mr. Rather met with David Westin, the President of ABC News, in Mr. Rather's apartment. At that meeting, Mr. Westin expressed interest in hiring Mr. Rather, but observed that he would first need to consult with his superiors on the West Coast. Similar to his experience with CNN, when Mr. Leibner followed up with ABC, Mr. Westin stated that Mr. Rather is a terrific reporter, but that ABC would not hire him. According to Mr. Leibner, there was reluctance in Mr. Westin's voice when Mr. Leibner asked him for specifics. But as with CNN, when Mr. Leibner pressed Mr. Westin, Mr. Westin conceded that the reasons related to Mr. Rather's association with the Broadcast and its aftermath.

123. Also during the Spring of 2006, Mr. Rather met with NBC News concerning employment opportunities. Mr. Leibner arranged a dinner meeting for Mr. Rather with Steve Capus of NBC at a restaurant in Rockefeller Center. During the dinner, Mr. Capus was very complimentary of Mr. Rather, referring to him as a great reporter, but he commented that there were problems with hiring Mr. Rather and that he would need to discuss the matter with his superiors. Mr. Rather later learned from Mr. Leibner that Jeff Zucker, President of NBC Universal Television Group, had decided that there was "too much controversy" over Mr. Rather and that NBC would not hire him under any circumstances.

124. Mr. Rather and Mr. Leibner had contact with several other television networks, but none showed the level of interest that would be expected for hiring someone with the talent, ability, stature, and experience of Mr. Rather. These networks included FOX, Arts & Entertainment, History Channel, HBO, Discovery, and National Geographic. None of these networks was interested in hiring Mr. Rather, each of them ultimately indicating to Mr. Leibner that he "had too much baggage," "was too hot to handle," "there was too much controversy," or words to that effect. For example, while Mr. Rather had met a high ranking executive from the Arts & Entertainment Network at a party and was told that he was interested in hiring Mr. Rather, when Mr. Leibner followed up, he was advised that Mr. Rather "had too much baggage."

125. Mr. Rather's experience stands in sharp contrast to other television news personalities of similar or lesser stature, all of whom were given substantial contracts in the latter years of their careers, even when operating in a more limited capacity. These include CBS newsmen Walter Cronkite and Mike Wallace as well as Tom Brokaw, Ted Koppel, and Larry King. Upon information and belief, these individuals have been compensated in the same range as the amount CBS had tentatively agreed to compensate Mr. Rather in the Summer of 2004.

126. For example, Tom Brokaw, upon retiring as anchor of the NBC Nightly News in 2004, was given a ten year contract and the title of NBC News Special Correspondent. Until 2014, Mr. Brokaw is being paid to remain with NBC News in a part-time capacity as a commentator and to produce long-form documentaries.

127. In another example, Ted Koppel reported in January 2006 that, following his retirement from ABC News' Nightline, he had been approached by as many as ten or so media organizations. Mr. Koppel accepted a position as Discovery Networks' "managing editor" in January 2006, just a few months before Mr. Rather began exploring employment with similarly situated cable networks. Indeed, Mr. Koppel reportedly accepted the Discovery Networks position instead of a similar offer from HBO. Notwithstanding HBO's reported interest in hiring Mr. Koppel (a position he turned down), HBO had no interest in discussing the possibility of employing Mr. Rather a few months later.

128. Mr. Rather's lost business opportunities were not limited to television broadcasting. During the period when he was still working for CBS, the period during which he was misled into remaining silent about the truth of the story underlying the Broadcast, Mr. Rather was approached on multiple occasions to write books. Having written books in the past about his experiences in investigating the major stories of his career, it was not unusual for Mr. Rather to be approached by book publishers. While still at CBS, Mauro Dipreta of publisher William Morrow and Mort Janklow, an agent and publisher, sought out and met with Mr. Rather to engage him to write books about his then-recent stories -- including the Broadcast, the Abu Ghraib story, and his interview with Saddam Hussein. Such book deals can pay in the millions of dollars. However, with his contract extension still not settled, and relying on CBS's

representations to him about the need to remain silent about the Bush story, Mr. Rather was induced to decline these offers.

129. Mr. Rather also had received expressions of interest from two radio networks to do nationally syndicated radio programs. Although these talks never developed into a money offer, such positions were not available for discussion in 2006.

130. Mr. Rather also lost significant opportunities to make public appearances and speeches, for which he regularly was compensated at a level of \$75,000 per event, and at times offered more. During the period from March 9, 2005 to June 21, 2006, Mr. Rather was induced to turn down even the diminished speech opportunities presented to him (through his reliance on the CBS misrepresentations discussed herein). Thereafter, his speechmaking opportunities remained diminished as a result of the stigma that remains arising out of his association with the Broadcast and the defendant's refusal to defend it.

131. Mr. Rather ultimately agreed to accept a position at HDNet, a not yet fully established cable network with limited distribution. Although now working, Mr. Rather's exposure is dramatically limited and, accordingly, his reputation and standing in his trade and profession have not recovered from the damage caused by the defendant's conduct.

132. Mr. Rather is one of the most experienced working journalists in the United States in covering Presidential elections, including primaries, conventions, and general elections, having covered elections since 1952. With nearly continuous coverage of the primary battles in the current Presidential election cycle, Mr. Rather would be the natural and expected choice to be contracted to appear regularly on either network or cable television to cover the election. No such contracts have been presented to Mr. Rather, and only a few opportunities of any kind, even

though more than three years and a half have elapsed since the Broadcast and its immediate aftermath.

**CAUSE OF ACTION**

**(Fraud)**

133. Plaintiff repeats and realleges paragraphs 1 through 132 as if fully set forth herein.

134. Mr. Moonves and Mr. Heyward, acting individually and on behalf of CBS, made and caused to be made the following representations to Mr. Rather:

a) The "CBS Will Defend Rather" representations:

- On September 19, 2004, in Mr. Heyward's office, Mr. Heyward represented to Mr. Rather that CBS would stand by and defend him against all attacks if he issued a public apology for the Documents and did not defend the story underlying the Broadcast or himself publicly;
- On September 20, 2004, in telephone calls between Mr. Schwartz and Mr. Rather, Mr. Schwartz buttressed what Mr. Heyward had represented the prior evening -- that CBS would defend Mr. Rather if he apologized;
- Shortly after the September 22, 2004 announcement of the composition of the Panel, in a meeting in Mr. Moonves' Viacom office, he represented that he and CBS cared about Mr. Rather and his future at CBS, that they wanted and intended to preserve Mr. Rather's career, and that after the Panel issues its report, CBS would turn its attention to Mr. Rather and his need to restore his reputation; and
- Within ten days after the publication of the Panel Report in early January 2005, Mr. Heyward represented again to Mr. Rather that CBS intended to preserve and protect Mr. Rather's reputation, this time in the wake of the Panel's findings.

b) The "Independent Investigation" representations:

- On September 19, 2004, in Mr. Heyward's office, Mr. Heyward represented to Mr. Rather that CBS would appoint an independent panel to investigate the story underlying the Broadcast, the results of which would be made public, assuring Mr. Rather that the panel would consist of people with impeccable credentials, who were unimpeachable, and who know the business;

- On September 20, 2004, in telephone calls between Mr. Schwartz and Mr. Rather, Mr. Schwartz buttressed what Mr. Heyward had represented the prior evening --that CBS would appoint an outside panel to conduct an independent investigation in to the story underlying the Broadcast;
  - On September 20, 2004, CBS issued a public statement announcing that it will be commissioning an independent review of the process by which the report was prepared and broadcast, that the names of the people conducting the review will be announced shortly, and that their findings will be made public;
  - On September 22, 2004, CBS issued another public statement, announcing the appointment of Mr. Thornburgh and Mr. Boccardi to comprise the so-called "Independent Review Panel";
  - In the week following the September 22, 2004 public announcement, Mr. Moonves represented to Mr. Rather that the Panel had been selected with care, that they would be fair in their investigation, and that the Panel was necessary for CBS to obtain an investigation that was accurate and credible.
- c) The "Full Investigation/Sharing" representation:
- On or about September 22, 2004, Mr. Heyward represented that, if Mr. Rather refrained from retaining a private investigator to continue the investigation of the story underlying the Broadcast, CBS would conduct a full investigation, pursuing all leads, and making the findings available to Mr. Rather.
- d) The "Panel Report Outcome" representation:
- Shortly preceding the November 22, 2004 announcement that Mr. Rather would be vacating the Anchor chair, and six weeks before the Panel's Report was issued, Mr. Moonves represented that there was no way the as yet unreleased Panel Report would not be bad for Mr. Rather.
- e) The "Contract Extension" representation:
- By letter dated November 22, 2004, Mr. Moonves represented that CBS would conclude an extension of Mr. Rather's contract in accordance with previous discussions between Mr. Leibner and Mr. Moonves.
- f) The "Fully Utilize Rather" representations:
- Before Mr. Rather was removed as Anchor, Mr. Heyward, Mr. Fager, and Ms. Mason represented to Mr. Rather that CBS intended to fully utilize Mr. Rather's abilities, experience and talents as a full time correspondent on *60 Minutes* and *60 Minutes II*, giving him the opportunity to restore his public image as a preeminent television journalist;

- However, even before Mr. Rather left the *CBS Evening News With Dan Rather*, Mr. Fager represented that Mr. Rather would not be working on *60 Minutes* because he was needed to “save *60 Minutes IP*”, and if he agreed to do so, he would be fully utilized on *60 Minutes* in the fall of 2005; and
- During the period from March 9, 2005 through the fall of 2005, CBS continuously represented to Mr. Rather that it would fully utilize his services and provide him with the opportunity to restore his public image as a preeminent television journalist.

135. All of these representations were false and were made to induce Mr. Rather to refrain from making public statements concerning the Broadcast or its aftermath so he could defend the truth of the story, respond to unproven accusations that the Documents were forgeries, and defend and protect his personal reputation. These false representations were made to enable CBS to more easily diminish Mr. Rather’s stature and destroy his reputation.

136. At the times these representations were made, CBS and defendants had no intention of fulfilling these promises, and knew them to be false.

137. All of these representations created liabilities separate, apart from, and collateral to CBS’s contractual obligations to Mr. Rather under the Agreement.

138. Reassured by his 40 years of dealing with CBS, Mr. Rather relied on the foregoing representations by, *inter alia*, not making public statements concerning the Broadcast or its aftermath to protect his reputation, enduring months of little or no airtime, foregoing other employment opportunities that would have been available to him, and not employing his own private investigator in the Fall of 2004 to further investigate the accuracy of the Documents and the Broadcast.

139. As a direct and proximate result of these knowing misrepresentations, Mr. Rather has suffered monetary damages due to lost business opportunities in his trade and profession, as well as reputation damages.

140. Mr. Rather's lost business opportunities in his trade and profession include the inability to be hired by a news network that previously had been interested in hiring him -- CNN -- and by several other broadcast and cable television networks and radio networks. The lost income in his chosen trade and profession occurred both during the period of time he was "warehoused" at CBS and after he was terminated. The amount of income Mr. Rather lost can be determined both by referencing the terms CBS had agreed to in principle in the summer of 2004 and through reference to the market for journalists of Mr. Rather's caliber during that period -- at least an average of \$4 million annually from 2005 to 2010.

141. Although Mr. Rather is now employed at HDNet, his current salary is far less than the salary he would have received had his contract at CBS been renewed, or had he been able to secure the other business opportunities he pursued.

142. Mr. Rather's annual salary at HDNet is \$1.25 million, \$1.5 million, and \$1.75 million respectively for each of the three years for the period June 2006 through June 2009. At CBS, the contract extension numbers discussed in August 2004, before the Broadcast and CBS's fraud, were much higher -- \$4 million through June 2008 and \$2 million from June 2008 to June 2010. (See ¶¶ 36-39 above.)

143. Other television and cable networks (at least one of which (CNN) had offered Mr. Rather employment in the past) retained journalists of Mr. Rather's stature during the period following CBS's and defendants' fraud, for positions for which Mr. Rather would have been able to compete had he not been defrauded by CBS, at salaries of at least \$4 million annually. (See ¶¶ 128-130, 153 above.) CNN's 1997 offer to Mr. Rather would have paid him \$6 million through 2007. (See ¶¶ 117-120 above.)

144. Television journalists of Mr. Rather's stature are given employment contracts for a period of years with guaranteed annual compensation. Mr. Rather's expected average annual salary for the period immediately following the fraud was in the \$4 million range, a range consistent with CBS's 2004 offer, and the rest of the market. Mr. Rather has also incurred damages in the form of lost wages because, as a result of CBS's and defendants' fraud, he was unable to obtain a commitment from *any* employer for more than three years.

145. Thus, during the three years in which he contracted to work for HDNet at an average salary of \$1.5 million per year, Mr. Rather has suffered lost wages from CBS's and defendants' fraud of \$2.5 million per year, or \$7.5 million, and is likely to be damaged at the same annual rate, or greater, in the years following the expiration of his HDNet contract.

146. Mr. Rather continues to be in good health, enjoys his work, has no interest in retiring, and expects to continue in his profession at least until 2012, if not longer.

147. Additionally, Mr. Rather's opportunities to earn additional income in other professional pursuits -- books, radio programs, and speeches -- were lost or diminished as a result of CBS's and defendants' fraud (¶¶ 131-133).

148. Before CBS's and defendants' fraud, Mr. Rather received invitations, and had sufficient time in his schedule, to make speeches and personal appearances, for which he was compensated. Due to CBS's and defendants' fraudulent insistence that he remain silent in the face of criticism of the Broadcast, CBS News, and Mr. Rather personally, Mr. Rather gave fewer speeches during the period from the Broadcast (September 2004) until his employment with CBS ceased (June 2006) than he would have given had CBS and defendants not defrauded him. As a result, Mr. Rather has incurred significant out-of-pocket damages -- lost additional professional compensation -- in an amount to be determined at trial.

149. Mr. Rather's lost additional professional compensation damages continued after the termination of his employment with CBS, when invitations for speech and appearance work have declined substantially as a result of CBS's and defendants' fraud. Mr. Rather has been able to earn payment for only six speeches per year on average over this roughly two year period, an out-of-pocket loss of roughly \$900,000 incurred to date, with losses expected to continue at the rate of \$450,000 per year.

150. CBS's and defendants' conduct was willful and malicious.

151. As a direct and proximate result of CBS's and defendants' fraud, Mr. Rather is entitled to compensatory damages in an amount to be determined at trial, but not less than \$20 million, and punitive damages in an amount to be determined at trial, but not less than \$50 million against defendants, jointly and severally.

WHEREFORE, plaintiff Dan Rather demands judgment against defendants, jointly and severally, as follows:

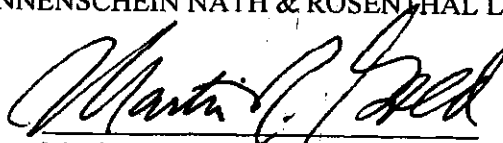
- a) Compensatory damages in an amount to be determined at trial, but not less than \$20 million, together with interest thereon;
- b) Punitive damages in an amount to be determined at trial, but not less than \$50 million; and

c) Such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
August 3, 2009

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