

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

**DERAY MCKESSON,**

**Plaintiff,**

**v.**

**JEANINE PIRRO and FOX NEWS  
NETWORK, LLC**

**Defendants.**

**Index No.** \_\_\_\_\_

**SUMMONS**

Date Index No. Purchased

**December 12, 2017**

TO THE ABOVE-NAMED DEFENDANTS:

FOX NEWS NETWORK, LLC  
1211 Avenue of the Americas  
New York, NY 10036

JEANINE PIRRO  
1211 Avenue of the Americas  
New York, NY 10036

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint and to serve a copy of your answer on the Plaintiff's attorney within 20 days after 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).

YOU ARE HEREBY NOTIFIED THAT if you fail to answer within the applicable time limit, judgment may be entered against you, by default, for the relief demanded in the Complaint.

The basis of venue is Defendants' principle place of business – the location of the tortious acts alleged in the Complaint – at 1211 Avenue of the Americas, New York, NY 10036.

Dated: December 12, 2017



Matthew D. Melewski (Bar No. 4697959)  
THE BOUTIQUE FIRM, PLC  
32 Fryer Lane  
Altamont, NY 12009  
(612) 999-8600  
matthew@theboutiquefirm.com

*Counsel for Plaintiff DeRay McKesson*

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**COMPLAINT**

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Plaintiff DERAY MCKESSON, by undersigned counsel, for his Complaint against Defendants JEANINE PIRRO and FOX NEWS NETWORK, LLC, alleges as follows:

**INTRODUCTION**

1. In 2016, Plaintiff DeRay McKesson was falsely arrested in Baton Rouge, Louisiana while attending a protest.
2. During the protest, a police officer was hit in the face with a rock, severely injuring him. The police officer later anonymously sued the social movement “Black Lives Matter,” as well as Mr. McKesson, for his injuries.
3. On September 28, 2017, the presiding judge determined that Black Lives Matter lacked the capacity to be sued.
4. The following day, during an appearance on the Fox News show “Fox & Friends,” Defendant Jeanine Pirro explained the rationale for the judge’s order dismissing Black Lives Matter.

5. Defendant Pirro then made a series of outrageously false and defamatory statements about Mr. McKesson, including that he directed someone to hit the police officer in the face with a rock.

6. Defendant Pirro, a lawyer for over 40 years discussing a well-publicized matter, was aware that these outrageous statements were false and made them with the specific intention of harming Mr. McKesson.

7. These false statements, made on widely-viewed national cable television show, severely damaged Mr. McKesson's reputation.

8. These false statements were also extremely dangerous and continue to endanger Mr. McKesson. Mr. McKesson is a black civil rights activist who regularly makes public appearances. Falsely stating that Mr. McKesson assaults police officers has seriously endangered Mr. McKesson's physical safety.

9. In response to these false and defamatory statements, Plaintiff seeks an award of compensatory, special and punitive damages, and an injunction preventing Defendants from publishing or republishing the defamatory statements.

#### **JURISDICTION & VENUE**

10. This court has jurisdiction pursuant to N.Y.C.P.L.R. §§ 301 and 302, and venue is proper pursuant to N.Y.C.P.L.R. § 503.

11. The tortious acts in question occurred in the County of New York and Defendants have their principal place of business in the County of New York.

#### **PARTIES**

12. Plaintiff DeRay McKesson is a natural person and a resident of Baltimore, Maryland. Mr. McKesson is a civil rights activist and co-founder of Campaign Zero, a non-profit creating

policy and advocacy to end police violence. Mr. McKesson also regularly speaks at events and conferences around the world, and was most recently the Interim Chief Human Capital Officer for Baltimore City Public Schools.

13. Defendant Jeanine Pirro is a natural person, and on information and belief, a resident of New York. On information and belief, Ms. Pirro is an employee of Defendant Fox News Network, LLC. Ms. Pirro is a host of the show “Justice” on Fox News Channel and was formerly a Westchester County Judge and the Westchester County District Attorney.

14. Defendant Fox News Network, LLC is a Delaware Limited Liability Company with a primary place of business at 1211 Avenue of the Americas, New York, NY 10036. Fox News Network, LLC operates Fox News Channel, a 24-hour cable television news channel in the U.S. that produces the shows “Justice” and “Fox & Friends.”

#### **FACTS**

15. On July 5, 2016, a man named Alton Sterling was shot and killed by Baton Rouge Police Department officers.

16. Concerned individuals began protesting the Baton Rouge Police Department’s conduct, demanding an independent investigation of Mr. Sterling’s death and changes to the Baton Rouge Police Department’s policies and procedures. Mr. McKesson was among the people exercising their first amendment rights to peaceably protest.

17. Mr. McKesson was arrested by the Baton Rouge Police Department on July 9, 2016 while peaceably protesting and was incarcerated at the East Baton Rouge Parish Prison until the following day. The East Baton Rouge District Attorney subsequently dismissed all charges against him.

18. Along with approximately 185 other persons arrested during the protest, Mr. McKesson sued the Baton Rouge Police Department and responsible government officials. The Police Department and other Defendants settled the case for approximately \$136,300 in August 2017.

19. At some point during the 2016 protest, a police officer was hit in the face with a piece of concrete or rock, knocking him to the ground, dislodging teeth, and causing severe injuries to his jaw and head.

20. In November 2016, the injured police officer anonymously sued Mr. McKesson and “Black Lives Matter” in the United State District Court for the Middle District of Louisiana, in a case titled *Officer John Doe Police Officer v. McKesson et al.* Mr. McKesson moved to dismiss the complaint on multiple grounds, including that “Black Lives Matter” is a social movement that lacks the capacity to be sued.

21. In response, the anonymous police officer filed a motion to amend the complaint, including proposing to add the hashtag “#blacklivesmatter” as a named Defendant.

22. On September 28, 2017, District Court Judge Brian Jackson dismissed the suit because, among other things, “Black Lives Matter” is a social movement and not an entity, and therefore lacks the capacity to be sued.

23. The following day, September 29, 2017, the Fox News talk show “Fox & Friends” brought Defendant Pirro on to address the dismissal of the suit. One of the hosts, Steve Doocy introduced Defendant Pirro and the topic:

“Joining us right now, host of Justice, Judge Jeanine Pirro. Judge lets talk a little bit about how a police officer anonymously sued black lives matter because he was at a demonstration where he was injured by somebody threw a rock or a bottle or something like that, and now a judge has come out and made it very clear you can’t sue black lives matter. [Turning to Defendant Pirro] Why?”

24. Defendant Pirro responded:

“Right. The Judge says you can’t sue Black Lives Matter because its an organization like

the civil rights movement; like the Tea Party; it doesn't have a governing body; it doesn't have bylaws . . .

25. Doocy interrupted with the interrogative "Too general?" Defendant Pirro continued:

"it doesn't have, yeah, it's too much, it's too amorphous. And yet the Plaintiff in this case said look, these people have meetings, they, it's an unincorporated association; they have national chapters, they solicit money."

26. Defendant Pirro then changed the topic from the subject of the discussion on capacity to be sued and directed a series of defamatory statements at Mr. McKesson:

**"And in this particular case, DeRay McKesson, the organizer, actually was directing people, was directing the violence . . .** but guess what, the judge said, you know what he was engaging in protected free speech. Now I want you to guess who appointed this federal judge." (emphasis added)

27. Co-host Brian Kilmaede suggested, facetiously, "Ronald Reagan?" Defendant Pirro answered:

"No, Barack Obama. And you know what the amazing part of this is, DeRay McKesson, and, wuh, uh several, I think its about 90 of the people who were protesting . . ."

28. At this point Defendant Fox News Network displayed a picture of federal judge Brian Jackson, who is black. Defendant Pirro interrupted herself: "There is the federal judge right there" before continuing:

". . . actually got a hundred thousand dollars from the City of Baton Rouge because Baton Rouge they said was very offensive to them and they, the police were militarized and although no one was injured, they felt that their civil rights were violated, what is wrong with this country today.

The problem is when you have federal judges who make decisions on politics – activist judges – not on the facts. **You've got a police officer who was injured, he was injured at the direction of DeRay McKesson, DeRay McKesson walks away with a hundred thousand dollars,** for an organization that is amorphous, we got a problem in this country." (emphasis added)

29. In total, Defendant Pirro falsely stated that Mr. McKesson "directed the violence" that included someone hitting a police officer in the face with a rock; that the police officer who was

hit in the face with a rock was “injured at the direction of Mr. McKesson;” and that Mr. McKesson “walk[ed] away with one hundred thousand dollars.”

30. Defendant Pirro made these false statements of fact on the highest viewed morning cable show in the country, “Fox & Friends,” which reaches over 1.7 million viewers.

31. These statements of fact are false, and were either known to be false by Defendant Pirro or were made with reckless disregard for whether they were true.

32. These false statements were outrageous, malicious, and made with the specific intention of harming Mr. McKesson.

33. These false statements severely damaged Mr. McKesson’s reputation and have seriously endangered Mr. McKesson’s physical safety.

34. As a direct and proximate result of Defendants’ intentional and malicious misconduct, Mr. McKesson suffered anguish, damage to his reputation, mental distress, severe anxiety and fear for the safety of himself and those around him – all of which are continuing in nature and will be suffered in the future.

35. A reasonable viewer of the Fox & Friends segment would conclude that Defendant Pirro was making statements of fact about Mr. McKesson.

36. Multiple news reports of Defendant Pirro’s statements concluded that they were defamatory false statements of fact.

37. The Washington Post published an article with the title “On ‘Fox & Friends,’ Jeanine Pirro slanders Black Lives Matter’s DeRay Mckesson”

38. Defendant Pirro provided a statement to the Washington Post, “I was quoting paragraph 17 and 19 from court documents.”

39. Defendant Pirro was not quoting paragraph 17 or 19 from any court documents.

40. Defendant Pirro stated on Twitter, in response to the news reports, “I quoted 2 paragraphs from court docs.”

41. Defendant Pirro did not quote 2 paragraphs from court docs.

42. Mr. McKesson, by letter, requested that Defendants Pirro and Fox News Network, LLC retract the statements and cease and desist from making further defamatory statements about Mr. McKesson.

43. Fox News Network refused to comply on the grounds that Defendant Pirro was reporting Judge Brian Jackson’s order dismissing Black Lives Matter. Defendant Pirro did not respond to the letter.

44. Defendant Pirro made the first defamatory statement about Mr. McKesson after discussing Judge Brian Jackson’s order, but the defamatory statement was unrelated to whether Black Lives Matter is capable of being sued.

45. Defendant Pirro, a highly accomplished attorney for over 40 years, was surely aware that her defamatory statements about Mr. McKesson were not relevant to whether Black Lives Matter was a social movement or an entity.

46. Defendant Pirro did not repeat claims made by the Plaintiff in *Officer John Doe Police Officer v. McKesson* about Mr. McKesson, nor did Defendant Pirro make a substantially accurate representation of them.

47. Defendant Pirro made these claims even though the order Fox News Network claims Defendant Pirro was reporting concluded that Plaintiff had “failed to state a plausible claim for relief against Mckesson.”

48. The Court order also specifically distinguished between the allegations in the complaint and the type of allegation made by Defendant Pirro:



In order to state a claim against Mckesson . . . **Plaintiff would have to allege facts that tend to demonstrate that Mckesson** “authorized, **directed**, or ratified specific **tortious activity**.” *Id.* Plaintiff, however, merely states – in a conclusory fashion – that Mckesson “incited the violence” and “g[ave] orders . . .” (emphasis added).

49. Judge Brian Jackson specifically concluded that the Plaintiffs did not allege that Mr. McKesson “directed” the violence including the injury to the police officer.

50. Defendant Pirro described the other two defamatory statements about Mr. McKesson as “facts” contrary to the reasoning of Judge Brian Jackson’s order:

The problem is when you have federal judges who make decisions on politics – activist judges – **not on the facts**. You’ve got a police officer who was injured, he was injured at the direction of DeRay McKesson, DeRay McKesson walks away with a hundred thousand dollars, for an organization that is amorphous, we got a problem in this country.” (emphasis added)

51. Defendant Pirro was not reporting a judicial decision, but contrasting false statements of fact about Mr. McKesson with the judicial decision.

52. Defendant Pirro specifically described the defamatory statements about Mr. McKesson as “the facts.”

53. The meaning of Defendant Pirro’s statement is very clear: Judge Brian Jackson’s order dismissing Black Lives Matter was based on politics, not on “the facts” that a police officer was hit in the face with a rock “at the direction of DeRay McKesson” and that Mr. McKesson walked away with “a hundred thousand dollars” on behalf of Black Lives Matter. These are false statements of fact that defamed Mr. McKesson.

#### **CLAIM FOR RELIEF – DEFAMATION**

54. Plaintiff hereby incorporates paragraphs 1 - 53 as if fully set forth herein.

55. Defendant Pirro made a series of false and defamatory statements about Mr. McKesson.

56. Defendant Pirro made these statements knowing they were false or with reckless disregard for whether they were true.

57. Defendant Pirro made these statements for the purpose of damaging Mr. McKesson.
58. Defendants published or caused to be published these false and defamatory statements, which did and had the tendency to expose Mr. McKesson to hatred, disparagement and ridicule.
59. As a result of these outrageous and malicious accusations, Mr. McKesson suffered, and will continue to suffer, severe damage to his reputation and fear regarding his personal safety.
60. Defendant Pirro falsely stated that Mr. McKesson committed a serious crime by directing another person to strike a police officer in the face with a rock. This false statement constitutes defamation *per se*.
61. In light of Mr. McKesson's standing in the community, the nature of the statements made about him, the extent to which those statements were circulated, and the tendency of such statements to injure someone such as Mr. McKesson, the defamatory statements have directly and proximately caused Mr. McKesson to suffer significant damages, including damage to his reputation, anxiety, mental suffering, and emotional distress. These damages are ongoing in nature and will continue to be suffered in the future.
62. Given the nature of Mr. McKesson's public appearances as a black civil rights activist, the false claims that Mr. McKesson directed the assault of a police officer have directly and proximately endangered Mr. McKesson's physical safety, causing him to suffer significant anxiety, mental suffering, and emotional distress. These damages are ongoing in nature and will continue to be suffered in the future.
63. Defendant Fox News Network, LLC employs Defendant Pirro and produces Fox & Friends and is therefore liable for these damages under the doctrine of *respondeat superior*.
64. Defendants' conduct was committed willfully, wantonly and maliciously, with the intent of harming Mr. McKesson's reputation and physical security, or in reckless disregard of the

substantial likelihood of causing him such harm, thereby entitling Mr. McKesson to an award of punitive damages.

65. As a direct and proximate result of Defendants' misconduct, Mr. McKesson is entitled to compensatory, special and punitive damages in an amount to be proven at trial.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff DeRay McKesson demands judgment against Defendants Jeanine Pirro and Fox News Network, LLC, as follows:

- i. An award of compensatory, special and punitive damages in amounts to be established at trial;
- ii. Injunctive relief prohibiting the publication or republication of the defamatory statements;
- iii. An award of Plaintiff's costs and expenses associated with this action; and
- iv. Such other relief as the Court deems just and proper.

Respectfully Submitted,

Dated: December 12, 2017



Matthew D. Melewski (Bar No. 4697959)  
THE BOUTIQUE FIRM, PLC  
32 Fryer Lane  
Altamont, NY 12009  
(612) 999-8600  
matthew@theboutiquefirm.com

*Counsel for Plaintiff DeRay McKesson*