

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

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FOX NEWS NETWORK, LLC,

Index No. _____

Plaintiff,

v.

SUMMONS

ABBY GROSSBERG,

Defendant.

-----X

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, on Plaintiff’s attorney within 20 days after service of this summons, exclusive of the day of service, or within thirty days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR Section 503(a) which is the county where Plaintiff and Defendant reside.

Dated: New York, New York
March 20, 2023

Respectfully submitted,

BAKER & MCKENZIE LLP

By: /s/Paul C. Evans

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Attorneys for Plaintiff Fox News Network, LLC

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

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FOX NEWS NETWORK, LLC,

Index No. _____

Plaintiff,

v.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

ABBY GROSSBERG,

Defendant.

-----X

Plaintiff, Fox News Network. LLC (“Fox News” or “Plaintiff”), by and through its undersigned attorneys, brings this complaint against Abby Grossberg (“Defendant”) and alleges as follows:

INTRODUCTION

1. This action arises out of Defendant’s recent threat to disclose communications she had with Fox News’ attorneys that are protected by the attorney-client-privilege and work product doctrine.

2. On February 23, 2023, Defendant threatened to sue Fox News for discrimination and retaliation in New York Supreme Court, and Defendant’s attorney sent Fox News a draft complaint detailing the alleged basis for Defendant’s employment claims.

3. The draft complaint contains pages of allegations purportedly summarizing and quoting communications that Defendant had with Fox News’ attorneys during meetings with those attorneys related to their defense of Fox News in a separate lawsuit (the “Unrelated Lawsuit”) and in preparation for Defendant’s deposition in that matter.

4. Defendant is not a party to the Unrelated Lawsuit. During the meetings with Fox News’ lawyers, which were for the purpose of developing legal strategy, providing Fox News with

legal advice, and preparing Defendant for her deposition, Fox News' attorneys represented Fox News' interests as a party in the Unrelated Lawsuit – they did not represent Defendant in her individual capacity. Rather, Defendant, as a current employee, was acting as an agent of Fox News.

5. In a transparent attempt to gain leverage over Fox News in connection with her alleged discrimination and retaliation claims, Defendant has threatened to file the draft complaint detailing Fox News' privileged communications during her meetings with Fox News' lawyers.

6. On March 10, 2023, Fox News sent Defendant's counsel a letter, demanding that Defendant refrain from referencing any portion of her privileged conversations with Fox News' attorneys, including in any complaint that she intends to file against Fox News.

7. However, Defendant's counsel has represented that Defendant disagrees that the information is privileged and Defendant intends to file such material publicly, forcing Fox News to commence this action and seek preliminary injunctive relief to prevent the disclosure of communications that are protected by the attorney client privilege and the work product doctrine.

PARTIES, JURISDICTION, AND VENUE

8. Plaintiff Fox News is a limited liability company organized under the laws of Delaware, with its principal place of business in New York County, New York.

9. Defendant is currently employed by Fox News and, upon information and belief, Defendant represents that she resides in New York County, New York.

10. This Court has general jurisdiction over Defendant pursuant to CPLR § 313 because, upon information and belief, Defendant has been domiciled in New York at all relevant times.

11. Additionally, venue is proper in this Court pursuant to CPLR § 503 because New York County is where Fox News' principal place of business is located, and, upon information and belief, where Defendant also resides.

FACTUAL BACKGROUND

The Unrelated Lawsuit

12. In March 2019, Defendant began working for Fox News as a Senior Booking Producer for a weekend morning show, where she was responsible for booking guests to appear on the show.

13. In March 2021, the Unrelated Lawsuit was filed against Fox News. That lawsuit is still pending.

14. Defendant has never been a party to the Unrelated Lawsuit. However, as part of the Unrelated Lawsuit, Defendant was required to sit for a deposition relating to her work as an employee of Fox News.

15. Fox News' attorneys met with Defendant, a current employee of Fox News, on several occasions in August and September 2022 (the "Privileged Meetings"). The purpose of these meetings was to further develop a legal strategy and defense to the claims alleged against Fox News in the Unrelated Lawsuit, allow Fox News' attorneys to provide Fox News with legal advice, and to prepare Defendant for her deposition.

16. During the Privileged Meetings, Defendant and Fox News' attorneys discussed a variety of topics relating to case strategy as well as topics specific to Defendant's deposition (hereinafter, the "Privileged Communications").

17. At the outset of the Privileged Meetings and periodically thereafter, Fox News' attorneys explicitly advised Defendant that they represented Fox News and not her in her individual capacity. They also explained that the sessions were subject to the attorney-client privilege.

18. Defendant was advised of the same thing earlier in the discovery period for the Unrelated Lawsuit when she was identified as a potential custodian of relevant documents and was interviewed by Fox News' outside counsel as part of their investigation into and collection of relevant documents for review and production.

19. Defendant was deposed in the Unrelated Lawsuit in the Fall of 2022.

Defendant Threatens to Sue Fox News and Disclose Privileged Communications

20. Five months after completing her deposition for the Unrelated Lawsuit, Defendant threatened to sue Fox News for alleged discrimination and retaliation (hereinafter, the "Threatened Litigation").

21. Specifically, on February 23, 2023, Defendant's counsel sent Fox News a draft complaint outlining Defendant's alleged discrimination and retaliation claims against Fox News under the New York State Human Rights Laws (NYSHRL) and the New York City Human Rights Laws (NYCHRL) (hereinafter, the "Draft Complaint").

22. The Draft Complaint contains pages of allegations that purport to describe Fox News' Privileged Communications. The Draft Complaint goes so far as to quote purported conversations between Fox News's attorneys and the Defendant during the Privileged Meetings regarding the Unrelated Lawsuit, which reflect Fox News' attorneys' legal analysis and trial strategy.

23. On March 10, 2023, counsel for Fox News sent counsel for Defendant a letter, putting Defendant on notice that portions of the Draft Complaint contain Privileged Communications and demanding that Defendant not disclose any Privileged Communications, including in any complaint that she intended to file against Fox News.

24. Defendant's counsel initially indicated that Defendant does not believe the Privileged Communications are privileged and intends to file publicly the Draft Complaint with the Privileged Communications.

25. On March 18, 2023, counsel for Defendant again indicated that Defendant does not view the communications between herself and Fox News' counsel as protected by Fox News' attorney client privilege.

26. On March 20, 2023, counsel for Defendant provided Fox News with two draft complaints, one captioned for filing in the Southern District of New York, which is a revised version of the Draft Complaint, and the second captioned for filing in the Superior Court for the State of Delaware. Both draft complaints continue to include the Privileged Communications.

FIRST CAUSE OF ACTION

Declaratory Judgment - Defendant's Threatened Use of the Privileged Communications

27. Fox News repeats and incorporates by reference the allegations set forth in the foregoing paragraphs as if the same were fully set forth herein.

28. By virtue of the foregoing, an actual and justiciable controversy has arisen and now exists between Fox News and Defendant concerning their respective rights and obligations regarding the Privileged Communications, and whether Defendant may disclose them in the Threatened Litigation, which justifies the issuance of declaratory relief by this Court.

29. Fox News' attorneys met with Defendant, a current employee of Fox News, and exchanged the Privileged Communications with her to further develop Fox News' legal strategy and defense to the claims alleged against it in the Unrelated Lawsuit and ultimately to provide Fox News with legal advice. The Privileged Communications consist of purported statements reflecting Fox News' attorneys' legal analysis and potential trial strategy in the Unrelated Lawsuit, which is set to go to trial shortly.

30. During the Privileged Meetings, Fox News' attorneys clearly informed Defendant that they represented Fox News in connection with the Unrelated Lawsuit, and not Defendant in her individual capacity. Defendant was not a party to the Unrelated Lawsuit but rather, as a current employee, was an agent of Fox News.

31. Fox News' attorneys also clearly informed Defendant that their discussions during these meetings for the Unrelated Lawsuit were to be kept confidential because they were subject to Fox News' attorney client privilege.

32. Therefore, Fox News has the right to rely the attorney-client privilege and the attorney-work product doctrine to prevent disclosure of the of the Privileged Communications.

33. Based on the above, the Court should enter a declaratory judgment finding that the communications in question are in fact protected by the attorney client privilege and work product Doctrine and Defendant's threatened disclosure of the Privileged Communications violates Fox News' rights under the attorney-client privilege and the work product doctrine.

SECOND CAUSE OF ACTION
Preliminary and Permanent Injunctive Relief Against Defendant

34. Fox News repeats and incorporates by reference the allegations set forth in the foregoing paragraphs as if the same were fully set forth herein.

35. Defendant's likelihood of success on the merits is high because the Privileged Communications are protected by Fox News' attorney-client privilege and the work product doctrine. Defendant's threat to disclose Fox News' Privileged Communications will violate Fox News' right to maintain the confidentiality of those communications under the attorney-client privilege and the work product doctrine.

36. If Defendant is permitted to disclose Fox News' Privileged Communications, Fox News will be irreparably harmed as a matter of law because once a privileged communication is revealed in the public domain, it cannot be withdrawn in any meaningful way.

37. Injunctive relief is necessary because there is no adequately remedy of law to prevent the unlawful disclosure of Fox News' Privileged Communications.

38. The balance of the equities clearly favor Fox News because it is the sole holder of the attorney-client privilege over the Privileged Communications, and Defendant does not need to publicly disclose the Privileged Communications to establish any of her alleged discrimination or retaliation claims against Fox News.

39. Therefore, Fox News is entitled to a preliminary and permanent injunction, prohibiting Defendant from disclosing Fox News' Privileged Communications, including but not limited to in any complaint that she intends to bring against Fox News.

PRAYER FOR RELIEF

WHEREFORE, Fox News requests that a judgment be made and entered granting it the following relief:

(a) On the first cause of action, a declaration that Defendant's communications with Fox News' attorneys are protected by the attorney-client privilege and work product doctrine, and may not be publicly disclosed by Defendant;

(b) Injunctive relief, prohibiting Defendant from disclosing Fox News' privileged information to the public or to any other third parties; and

(c) Any order granting Fox News such other and further relief as this Court deems just and proper.

Dated: March 20, 2023

Respectfully submitted,

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