

**IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAURA WILLIS LUHN,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 1:19-cv-01180-DLF
)	
SUZANNE GUNDERSON SCOTT)	
)	
and)	
)	
THE FOX CORPORATION,)	
)	
Defendants.)	
)	

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Suzanne Scott and the Fox Corporation hereby move to dismiss the Complaint for failure to state a claim upon which relief can be granted. The points and authorities in support of this motion are set forth in the accompanying Memorandum.

Dated: May 20, 2019

Respectfully submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
BACKGROUND	2
A. The <i>Los Angeles Times</i> Article	2
B. This Lawsuit.....	4
STANDARD OF REVIEW	5
ARGUMENT	5
I. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST SUZANNE SCOTT	5
A. Defamation.....	7
B. False Light	11
C. Intentional Infliction of Emotional Distress	13
II. THE DERIVATIVE CLAIMS AGAINST THE FOX CORPORATION FAIL.....	14

TABLE OF AUTHORITIES

	Page
CASES	
<i>Arpaio v. Obama</i> , 797 F.3d 11 (D.C. Cir. 2015)	5
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	5
<i>Blatty v. New York Times Co.</i> , 728 P.2d 1177 (Cal. 1986)	8, 9
<i>Blodgett v. Univ. Club</i> , 930 A.2d 210 (D.C. 2007)	12
<i>Catsouras v. Dep’t of California Highway Patrol</i> , 181 Cal. App. 4th 856 (2010)	14
<i>Coles v. Wash. Free Weekly, Inc.</i> , 881 F. Supp. 26 (D.D.C. 1995), <i>aff’d</i> , 88 F.3d 1278 (D.C. Cir. 1996)	7
<i>Doe v. Bernabei & Wachtel, PLLC</i> , 116 A.3d 1262 (D.C. 2015)	12
<i>Fleming v. AT & T Info. Servs., Inc.</i> , 878 F.2d 1472 (D.C. Cir. 1989)	9
<i>Freeman v. Johnston</i> , 192 A.D.2d 250 (N.Y. App. Div. 1993)	12
<i>Guilford Transp. Indus., Inc. v. Wilner</i> , 760 A.2d 580 (D.C. 2000)	10
<i>Howell v. New York Post Co.</i> , 612 N.E.2d 699 (N.Y. 1993)	14
<i>Hurd v. D.C., Gov’t</i> , 864 F.3d 671 (D.C. Cir. 2017)	5
<i>Johnson v. Ralphs Grocery Co.</i> , 204 Cal. App. 4th 1097 (Cal. Ct. App. 2012)	14

Jonathan Woodner Co. v. Breeden,
665 A.2d 929 (D.C. 1995)14

Kahl v. Bureau of Nat’l Affairs, Inc.,
856 F.3d 106 (D.C. Cir. 2017).....7

Kane v. Orange Cty. Publ’ns,
232 A.D.2d 526 (N.Y. App. Div. 1996)12

Klayman v. Segal,
783 A.2d 607 (D.C. 2001)9, 11, 12

Kowalevich v. United States,
302 F. Supp. 3d 68 (D.D.C. 2018).....13

Mar-Jac Poultry, Inc. v. Katz,
773 F. Supp. 2d 103 (D.D.C. 2011).....7

McRedmond v. Sutton Place Rest. & Bar, Inc.,
48 A.D.3d 258 (N.Y. App. Div. 2008)14

Millstein v. Henske,
722 A.2d 850 (D.C. 1999)10

Murphy v. Am. Home Prods. Corp.,
448 N.E.2d 86 (N.Y. 1983).....13

New York Times Co. v. Sullivan,
376 U.S. 254 (1964).....8

Sec. & Exch. Comm’n v. RPM Int’l, Inc.,
282 F. Supp. 3d 1 (D.D.C. 2017).....15

Selleck v. Globe Int’l, Inc.,
166 Cal. App. 3d 1123 (Cal. Ct. App. 1985)12

Smith v. United States,
121 F. Supp. 3d 112 (D.D.C. 2015).....13

Three Amigos SJJ Rest., Inc. v. CBS News Inc.,
28 N.Y.3d 82 (N.Y. 2016)8

United States v. Bestfoods,
524 U.S. 51 (1998).....15

<i>Unterberger v. Red Bull N. Am., Inc.</i> , 162 Cal. App. 4th 414 (2008)	13
<i>Vasquez v. Whole Foods Mkt., Inc.</i> , 302 F. Supp. 3d 36 (D.D.C. 2018)	12
<i>White v. Fraternal Order of Police</i> , 909 F.2d 512 (D.C. Cir. 1990)	10, 11
<i>Young Women’s Christian Ass’n of the Nat’l Capital Area, Inc. v. Allstate Ins. Co. of Canada</i> , 275 F.3d 1145 (D.C. Cir. 2002)	7
<i>Zimmerman v. Al Jazeera Am., LLC</i> , 246 F. Supp. 3d 257 (D.D.C. 2017)	12
OTHER AUTHORITIES	
Restatement Second of Torts § 46, Cmt. d	13
2 Robert D. Sack, <i>Sack on Defamation</i> § 16.2.1 (5th ed. 2017)	7, 8

INTRODUCTION

Plaintiff Laura Luhn is a former employee of the Fox News Network, LLC (“Fox News”), who alleges that she was sexually harassed by former CEO Roger Ailes. Nearly eight years ago, she settled her claims against Fox News out of court. In the present case, she asserts claims against the new CEO of Fox News, Suzanne Scott, who Luhn claims “defamed” her by giving an interview to the *Los Angeles Times* in which Scott said she did not have any personal knowledge of Ailes’ alleged wrongdoing.

To describe the theory of the Complaint is to refute it. According to Luhn, when Scott told the *L.A. Times* that she herself had not known about Ailes’ alleged misconduct, that was somehow tantamount to accusing Luhn of “fabricating” her allegations against Ailes. But as the article clearly shows, Luhn’s characterization of Scott’s comments is entirely inaccurate. Scott did not even *mention* Luhn, much less accuse her of lying or fabricating anything. To the contrary, Scott expressly disclaimed having had any contemporaneous knowledge—one way or the other—as to whether Ailes had engaged in any misconduct with anyone. In saying that she *did not know* what happened, Scott could not possibly have been accusing Luhn of *lying* about what happened. If anything, a reasonable reader of the article would infer the opposite, as Scott is quoted saying she is “devastated” for the women who worked at Fox News, and then explaining the steps she has taken to help “heal” the workplace.

All of Luhn’s claims must be dismissed because they are based on a distortion of Scott’s statements. Scott’s words cannot reasonably be construed to defame Luhn or portray her in a “false light,” much less are they sufficiently “extreme and outrageous” to sustain a claim for the intentional infliction of emotional distress. And because the claims against the Fox Corporation are entirely derivative—not to mention pled against the wrong corporate entity—they too must be dismissed.

BACKGROUND¹

Plaintiff Laura Luhn spent nearly 15 years working for Fox News, during which time she alleges that she was subject to sexual harassment by former CEO Roger Ailes. Compl. ¶¶ 28-30. After her departure in 2011, she retained counsel and settled her claims against Fox News. *Id.* ¶ 70. Years later, several other women made harassment allegations against Ailes, leading to his departure from the company in 2016. *Id.* ¶ 7. Fox News named Defendant Suzanne Scott as its new CEO in May 2018.

A. The *Los Angeles Times* Article

On April 3, 2019, the *Los Angeles Times* published an article that included several quotes Scott provided during an interview at Fox News headquarters in New York. *See* Exhibit A.² As part of a broader profile on Scott, the article discusses the sexual harassment accusations that led to Ailes's departure, and describes how Scott has "tried to be an agent of change for the company's workplace culture." *Id.* at 3.

By way of background, the article explains that when Scott took charge, the company had been "rocked" by multiple "harassment lawsuits." *Id.* The article cites "numerous lurid reports describing alleged bad behavior by Ailes," leading in one case to a "\$20 million settlement." *Id.* The article then immediately quotes Scott's reaction to the allegations of misconduct against Ailes: "I felt devastated for the women who work here," Scott said, and "I wanted to do everything I could to heal this place." *Id.*

The article then explains how Scott "had one-on-one meetings with employees about the company's work environment for women and how to improve it," and quotes Scott as saying that

¹ Discussion of facts in this Memorandum are based on the allegations in the Complaint.

² Because the text of the article attached to the Complaint is partially obstructed, Defendants have attached a clean copy as their own Exhibit A, attached herewith.

the meetings were “often uncomfortable and emotional.” *Id.* at 4. In some of her meetings with employees, the article reports that Scott said “she had no knowledge of Ailes’ behavior even though she was part of his inner circle.” *Id.* The article also quotes Scott as saying, “I had no clue on what was going on in Roger Ailes’ office,” and “I have never had any issues with any sort of harassment myself.” *Id.*

The article then details the new workplace culture that has emerged under Scott’s leadership. It explains that “Scott has eradicated the memory of Ailes” by, among other things, “overseeing a massive renovation of the entire second floor where his corporate lair was located.” *Id.* The article further reports that, according to “women at the company,” “there is now a process to report inappropriate behavior to human resources, with names and phone numbers of who to reach posted in the restrooms.” *Id.* The article quotes Fox News meteorologist Janice Dean—who “recently detailed her own uncomfortable encounters with Ailes”—as saying, “I don’t feel fear anymore,” which “truly is because of the strong women who work at the company now.” *Id.* It also provides favorable quotes from various other current and former Fox News employees, one of whom praised Scott for her “openness and transparency.” *Id.* at 5. Former network anchor Greta Van Susteren is quoted as complimenting Scott by deeming her “the right choice to lead the company in the post-Ailes era.” *Id.* According to Van Susteren, Scott is “smart, she works hard and she didn’t do anything wrong.” *Id.*

Although the article identifies one of Ailes’s accusers—“former anchor Gretchen Carlson,” *id.* at 3—it does not make any mention of Luhn, either by name or by description.

B. This Lawsuit

Luhn filed the present lawsuit naming as Defendants both Scott and the Fox Corporation, which is the parent company of Fox News. The Complaint does not allege that Scott is an employee of the Fox Corporation, nor does it allege any tortious acts taken by the Fox Corporation itself.

The gravamen of the Complaint is that, by stating “she was not aware of any of Ailes’ sexual harassment,” Scott “defamed, smeared and discredited [Luhn] by calling her a liar and creating the false implication that [she] fabricated sexual assault allegations against Ailes.” Compl. ¶ 17. According to Luhn, Scott’s statements “severely harmed [her] reputation for honesty and subjected her to ridicule and shame by falsely portraying her as a someone who fabricates sexual assault allegations.” *Id.* ¶ 19. As a result, Luhn claims that she has suffered “severe harm,” including “severe emotional distress, physical ailments and PTSD.” *Id.* ¶ 21.

Based on these allegations, the Complaint asserts four claims against the Defendants. In the first and second counts, Luhn alleges that the Defendants “defamed” her. Although she does not identify any statement expressly accusing her of lying or dishonesty (or even mentioning her), she alleges that Scott’s statements “created the false and misleading *implication* that [Luhn] is dishonest and fabricated allegations of sexual abuse against Ailes.” *Id.* ¶¶ 74-83 (emphasis added).

In the third count, based on the same factual allegations, Luhn asserts that the Defendants are liable under a theory of “false light” invasion of privacy. According to the Complaint, Scott’s statements “impl[ied] that Luhn was dishonest and fabricated sexual assault allegations [and] placed [her] in a false light that would be offensive to a reasonable person.” *Id.* ¶¶ 84-88.

The fourth count alleges “intentional infliction of emotional distress,” claiming that “Defendants engaged in extreme and outrageous conduct by falsely calling [Luhn] a liar and creating the implication that she fabricated sexual assault allegations against Ailes.” *Id.* ¶ 89-92.

STANDARD OF REVIEW

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim . . . that is plausible on its face.’” *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The court must “‘accept all the well-pleaded factual allegations of the complaint as true.’” *Hurd v. D.C., Gov’t*, 864 F.3d 671, 678 (D.C. Cir. 2017) (quoting *Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015)). But “[t]hreadbare recitals . . . , supported by mere conclusory statements, do not suffice.” *Arpaio*, 797 F.3d at 19 (quoting *Iqbal*, 556 U.S. at 678). The court cannot assume the truth of “legal conclusions” or “formulaic recitation[s],” *Iqbal*, 556 U.S. at 678, nor can it “‘accept inferences that are unsupported by the facts set out in the complaint,’” *Arpaio*, 797 F.3d at 22 n.2 (quoting *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 732 (D.C. Cir. 2007)).

In addition, Plaintiffs must allege facts that are more than “‘merely consistent with’ a defendant’s liability.” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2009)). The claim must be “facial[ly] plausib[le],” and the facts alleged must “allow[] the court to draw the reasonable inference that the defendant is liable.” *Id.* “[D]etermining whether a complaint states a plausible claim...[is] context-specific, ...requir[ing] the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

ARGUMENT

I. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST SUZANNE SCOTT

The Complaint fails as a matter of law. Although it sounds primarily in defamation, it falters on the two most basic elements of a defamation claim—that a statement be “of and concerning” the plaintiff, and that it actually *defame* the plaintiff. According to the Complaint, Defendant Scott defamed Luhn in an *L.A. Times* interview by “calling her a liar” and “creating the

false implication that [she] fabricated sexual assault allegations” against former Fox News CEO Roger Ailes. Compl. ¶ 17. But as even a cursory review of the article shows, that description of Scott’s statements is highly inaccurate.

For one thing, the article does not even *mention* Luhn. It quotes Defendant Scott, but only as saying that she was not aware of various (unspecified) acts of sexual misconduct by Ailes against various (unspecified) victims. That is not a statement about Luhn at all, but rather a statement about Scott’s own personal knowledge (or the lack thereof). And even if it could somehow be stretched into a statement *about* Luhn, it does not *defame* Luhn because it does not say that her allegations against Ailes are false. Whether Scott *knew about* sexual misconduct by Ailes is a separate question from whether it occurred, and there is no basis for conflating the two. By saying she *did not know* about Ailes’s actions, Scott obviously was not implying that his accusers were lying about his actions. To the contrary, because she made clear that she herself lacked personal knowledge of whether the allegations were true, she inherently could not be saying or implying that the allegations were false. If anything, a reasonable reader would infer the exact *opposite* of an accusation of lying, as Scott said she is “devastated for the women who work here,” and then explained that she has instituted new workplace reforms so that the company can “heal.” The direct context of Scott’s own statements thus further negates any possible defamatory implication.

Luhn’s “false light” and “intentional infliction” claims are entirely duplicative and likewise fail as a matter of law. For the same reason that Scott’s statements do not say anything defamatory about Luhn, they also do not cast her in a false and offensive “light.” Nor do they come close to

the type of “extreme and outrageous” conduct necessary to sustain a claim for intentional infliction of emotional distress. All of the claims against Scott must accordingly be dismissed.³

A. Defamation

To be actionable in defamation, a statement must be: (1) defamatory, (2) “of and concerning” the plaintiff; (3) capable of being proven false; (4) false; and (5) made with the requisite degree of fault. *Coles v. Wash. Free Weekly, Inc.*, 881 F. Supp. 26, 30 (D.D.C. 1995), *aff’d*, 88 F.3d 1278 (D.C. Cir. 1996). Here, Luhn’s claim fails on the first two (and most basic) of these elements. The statements here are not “of and concerning” Luhn because they do not even mention her. Much less do they *defame* her, because they do not say anything that could even remotely injure her reputation. Her defamation claim should therefore be promptly dismissed.

As this court has recognized, courts “properly dispose of defamation cases . . . as soon as possible” to avoid costly litigation that can burden speech “even if [the] defendant ultimately prevails.” *Mar-Jac Poultry, Inc. v. Katz*, 773 F. Supp. 2d 103, 111 (D.D.C. 2011). Indeed, “the Supreme Court has directed courts to expeditiously weed out unmeritorious defamation suits.” *Kahl v. Bureau of Nat’l Affairs, Inc.*, 856 F.3d 106, 109 (D.C. Cir. 2017). Libel claims are particularly suited for early dismissal because, “unlike in most litigation, in a libel suit the central event—the communication about which suit has been brought—is ordinarily before the judge at the pleading stage.” 2 Robert D. Sack, *Sack on Defamation* § 16.2.1 (5th ed. 2017). Thus, “courts routinely consider, on motions to dismiss . . . issues such as whether the statement at bar is capable

³ Although the Complaint does not specify which state law it believes should govern, no choice-of-law analysis is required because there is no material “conflict between the laws of the relevant jurisdictions.” *Young Women’s Christian Ass’n of the Nat’l Capital Area, Inc. v. Allstate Ins. Co. of Canada*, 275 F.3d 1145, 1150 (D.C. Cir. 2002). All of Luhn’s claims are governed by the same black-letter tort law, with a single exception: New York does not recognize the “false light invasion of privacy” tort, but that makes no difference because Luhn’s false-light claim is entirely duplicative of her defamation claim and fails as a matter of law. *See infra* p. 12 n.5.

of bearing a defamatory meaning” and “whether it is ‘of and concerning’ the plaintiff,” and courts “frequently grant motions on these grounds and others.” *Id.* This Court should do so here.

1. The most basic element of a defamation claim requires the plaintiff to “show that the matter published is ‘of and concerning’ them.” *Three Amigos SJL Rest., Inc. v. CBS News Inc.*, 28 N.Y.3d 82, 86–87 (N.Y. 2016). Specifically, the plaintiff “must plead and prove that the statement referred to them and that a person hearing or reading the statement reasonably could have interpreted it as such.” *Id.* (citing Prosser & Keeton, Torts § 111 at 783 (5th ed. 1984)). This “specific reference” requirement “limits the right of action . . . to those who are the direct object of criticism [by] denying it to those who merely complain of nonspecific statements that they believe cause them some hurt.” *Blatty v. New York Times Co.*, 728 P.2d 1177, 1183 (Cal. 1986). “To allow a plaintiff who is not identified, either expressly or by clear implication, to institute such an action poses an unjustifiable threat to society.” *Id.* Accordingly, the “burden is not a light one,” and it presents “a question of law for the courts to decide” at the threshold. *Three Amigos*, 28 N.Y.3d at 86–87.⁴

Here, the Complaint utterly fails to show that Scott’s statements were “of and concerning” Luhn. She is not even mentioned anywhere in the entire *L.A. Times* article that forms the sole basis of her suit. The only Ailes accuser identified in the article is “former anchor Gretchen Carlson.” Exhibit A, at 3. Although the article refers generically to “harassment lawsuits and numerous lurid reports” about Ailes, *id.*, it does not identify Luhn in any way. Accordingly, because Luhn is not mentioned, the only question is whether the article contains a “clear implication” that it is referring to her. *Blatty*, 728 P.2d at 1183.

⁴ This threshold showing is required not only by state law but also by the First Amendment. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 288 (1964) (a libel claim is “constitutionally defective” if the statement is not “of and concerning” the plaintiff).

It does not. The Complaint identifies only two statements that it claims are about Luhn. In the first, Scott is reported as saying that “she had no knowledge of Ailes’ behavior even though she was part of his inner circle.” Compl. ¶ 12. In the second, Scott is quoted as saying that she “had no clue on what was going on in Roger Ailes’ office,” and that she “never had any issues with any sort of harassment myself.” *Id.* ¶ 13. These statements are not about Luhn. They are exclusively about Defendant Scott—what she personally knew (or did not know), and what she personally experienced (or did not experience). There is no implication, much less a *clear* implication, that these self-descriptive statements about Scott say anything about Luhn at all.

2. Even if Scott’s statements about her own personal knowledge were somehow construed to be *about* Luhn, they plainly did not “defame” her. To be defamatory, a statement “must be more than unpleasant or offensive; the language must make the plaintiff appear ‘odious, infamous, or ridiculous.’” *Fleming v. AT & T Info. Servs., Inc.*, 878 F.2d 1472, 1475-76 (D.C. Cir. 1989) (quoting *Howard Univ. v. Best*, 484 A.2d 958, 989 (D.C. 1984)). The statement “may not be isolated and then pronounced defamatory,” but “must be examined within the context of the entire article.” *Klayman v. Segal*, 783 A.2d 607, 614, 618 (D.C. 2001) (holding statements “not reasonably capable of defamatory meaning as a matter of law since they do not make Mr. Klayman appear ‘odious, infamous and ridiculous.’”).

Here, Luhn claims that Scott’s statements in the *L.A. Times* article defamed her by “calling her a liar” and “creating the false impression that [she] fabricated sexual assault allegations” against Ailes. Compl. ¶ 17. The statements did no such thing. Notably, the Complaint does not allege that Scott said anything that was expressly defamatory. Instead, it relies on a strained chain of inferences in an effort to construct a case of “implied” defamation. Compl. ¶¶ 79-83. Insofar as it is possible to decipher, the reasoning appears to go like this: Because Scott worked with Ailes,

she *necessarily* would have known both about Ailes’s misconduct generally and his alleged misconduct towards Luhn specifically. But because Scott denied having any “clue” about such misconduct, she somehow implied that Luhn must have “fabricated” her specific misconduct allegations against Ailes. *See* Compl. ¶ 19 (“Scott’s statements have severely harmed Plaintiff Luhn’s reputation for honesty and subjected her to ridicule and shame by falsely portraying her as a someone who fabricates sexual assault allegations.”).

This tortured set of inferences defies the rule that purely “imagined slights” cannot serve as “the basis for costly litigation” in a defamation suit. *Guilford Transp. Indus., Inc. v. Wilner*, 760 A.2d 580, 596 (D.C. 2000). A non-defamatory statement cannot be rendered actionable based on a “strained reading of the language in question.” *Millstein v. Henske*, 722 A.2d 850, 857 (D.C. 1999). As the D.C. Circuit has warned, “courts must be vigilant not to allow an implied defamatory meaning to be manufactured from words not reasonably capable of sustaining such meaning.” *White v. Fraternal Order of Police*, 909 F.2d 512, 519 (D.C. Cir. 1990).

Here, the alleged “implication” of defamatory meaning is entirely “manufactured.” *Id.* Saying that Scott did not *know* about Ailes’s alleged misconduct does not imply that it did not *happen*. Indeed, Scott expressly disclaimed any such implication by saying she “had no clue on what was going on in Roger Ailes’s office.” Exhibit A, at 4. The only thing this “implies” is that Scott had “no clue” whether Ailes engaged in the alleged misconduct—which in no way implies that he did not engage in those acts, much less that those alleging such acts are telling deliberate falsehoods. Contrary to the Complaint’s tendentious extrapolation, the mere fact that Scott worked with Ailes did not mean he would have told her about his alleged sexual misdeeds. In fact, given the nature of his alleged misconduct, one would expect him to take measures to *hide* it from even his closest business associates. In any event, even assuming *arguendo* that Scott was somehow

aware of Ailes's misconduct, and further assuming that she knew of Ailes' specific misconduct against Luhn, her denial of such knowledge, while not truthful under this hypothetical, would in no way call Luhn a liar or question her integrity. A statement *denying knowledge* of underlying facts, regardless of whether the denial is false or true, cannot possibly imply that Luhn's statements about the (unknown) facts are lies. In short, simply describing the illogical and tortured chain of inference upon inference needed to imply any defamatory meaning shows that the claim is facially meritless.

This is particularly true because a reader searching for some hidden meaning in the article would have inferred that Scott *believes* the women who made harassment allegations against Ailes. For example, Scott herself is quoted as saying that, after Ailes left, "I felt devastated for the women who work here," and "I wanted to do everything I could to heal this place." *Id.* at 3. Likewise, the article relates how there were "numerous lurid reports" and multiple lawsuits against Ailes, one of which settled for "\$20 million." *Id.* The article also quotes another Fox News employee discussing "her own uncomfortable encounters with Ailes," describing her "hid[ing]" and "cry[ing]" in the bathroom, and stating that she doesn't "feel fear anymore" after his departure. *Id.* at 4. The article also reports that Scott is "tr[ying] to be an agent of change for the company's workplace culture," that she has "eradicated the memory of Ailes," and that she has instituted a new "process to report inappropriate behavior to human resources." *Id.* at 3–4. All of this language in the article strongly suggests that Ailes was guilty of at least some misconduct. Accordingly, "the context of the entire article," as well as the challenged sentences themselves, negates any possible defamatory implication that Ailes's accusers are liars. *Segal*, 783 A.2d at 614.

B. False Light

For the same reasons discussed above, Luhn's claim for "false light invasion of privacy" also must be dismissed. As courts universally recognize, "[a] plaintiff may not avoid the strictures

of the burdens of proof associated with defamation by resorting to a claim of false light invasion.” *Id.* at 619 (quoting *Moldea v. New York Times Co.*, 15 F.3d 1137, 1151 (D.C. Cir. 1994)). In jurisdictions where the “false light” tort is recognized, it requires a statement “of and concerning” the plaintiff that “places the plaintiff in a false light that would be offensive to a reasonable person.” *Doe v. Bernabei & Wachtel, PLLC*, 116 A.3d 1262, 1267 (D.C. 2015) (quoting *Bean v. Gutierrez*, 980 A.2d 1090, 1094 (D.C. 2009)). Because these are essentially the same elements required for defamation, “a false light invasion of privacy claim must meet the requirements of a libel claim on all aspects of the case.” *Selleck v. Globe Int’l, Inc.*, 166 Cal. App. 3d 1123, 1134 (Cal. Ct. App. 1985); *see also Blodgett v. Univ. Club*, 930 A.2d 210, 223 (D.C. 2007) (“[W]here the plaintiff rests both his defamation and false light claims on the same allegations . . . the claims will be analyzed in the same manner.”); *Vasquez v. Whole Foods Mkt., Inc.*, 302 F. Supp. 3d 36, 62 (D.D.C. 2018) (same); *Zimmerman v. Al Jazeera Am., LLC*, 246 F. Supp. 3d 257, 273 (D.D.C. 2017) (same).⁵

Luhn’s “false light” claim rests on the same allegations as her defamation claim, and it fails for the same reasons. In particular, she alleges that Scott’s statements to the *L.A. Times* “impl[ied] that Luhn was dishonest and fabricated sexual assault allegations,” placing her “in a false light that would be offensive to a reasonable person.” Compl. ¶ 87. But as explained, Scott’s statements were not even *about* Luhn, much less did they portray her in an offensive light. *See supra* pp. 7-11. Luhn’s false-light claim must accordingly be dismissed as a matter of law.

⁵ New York does not even recognize the “false light” tort. *See Freeman v. Johnston*, 192 A.D.2d 250, 253 (N.Y. App. Div. 1993) (New York “does not recognize” the tort); *Kane v. Orange Cty. Publ’ns*, 232 A.D.2d 526, 528 (N.Y. App. Div. 1996) (same).

C. Intentional Infliction of Emotional Distress

Luhn’s intentional-infliction claim also must be rejected because it is just another retread of her defamation and false-light claims. In this count, Luhn simply repackages the same allegations by asserting that Scott “engaged in extreme and outrageous conduct by falsely calling [her] a liar and creating the implication that she fabricated sexual assault allegations against Ailes.” Compl. ¶ 90. For the reasons above, however, that tendentious characterization of Scott’s statements is entirely unsupportable, and so the claim fails for that reason alone.

In addition, Luhn’s intentional-infliction claim also fails because Scott’s statements were not “extreme” or “outrageous.” To establish intentional infliction of emotional distress, a plaintiff “must show (1) extreme and outrageous conduct on the part of the defendant which (2) either intentionally or recklessly (3) causes the plaintiff severe emotional distress.” *Kowalewicz v. United States*, 302 F. Supp. 3d 68, 76 (D.D.C. 2018) (quoting *Larijani v. Georgetown Univ.*, 791 A.2d 41, 44 (D.C. 2002)). “Liability will not be imposed for mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” *Id.* (quoting *District of Columbia v. Tulin*, 994 A.2d 788, 800 (D.C. 2010)). Rather, “[t]he conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* (quoting *Tulin*, 994 A.2d at 800); *see also* *Murphy v. Am. Home Prods. Corp.*, 448 N.E.2d 86 (N.Y. 1983); *Unterberger v. Red Bull N. Am., Inc.*, 162 Cal. App. 4th 414, 423 (2008); Restatement Second of Torts § 46, Cmt. d.

“Whether the conduct complained of is sufficiently outrageous is a question of law that should be decided by the court on a motion to dismiss.” *Smith v. United States*, 121 F. Supp. 3d 112, 124 (D.D.C. 2015), *aff’d*, 843 F.3d 509 (D.C. Cir. 2016); *Johnson v. Ralphs Grocery Co.*, 204 Cal. App. 4th 1097, 1108 (Cal. Ct. App. 2012) (same); *Howell v. New York Post Co.*, 612 N.E.2d

699, 702 (N.Y. 1993) (same). The standard is “rigorous, and difficult to satisfy,” which is why New York’s highest court has rejected “every” such claim it has considered. *Id.*

Here, Scott’s statements were neither extreme nor outrageous as a matter of law. As courts have recognized, “making statements to news media about [particular] litigation . . . falls far short of the standard required” to sustain an intentional-infliction claim. *McRedmond v. Sutton Place Rest. & Bar, Inc.*, 48 A.D.3d 258, 259 (N.Y. App. Div. 2008). At most, that is all Scott did here: She simply told the *L.A. Times* that she herself was not aware of Ailes’s alleged misconduct at the time it was happening. Regardless of how Ailes’s underlying *conduct* could be characterized, it was not “outrageous” for Scott to simply deny personal knowledge of it.

Scott’s benign statements contrast sharply with the rare cases where intentional-infliction claims have been allowed. For example, the defendants in one case posted photos of the decapitated remains of an 18-year-old traffic accident victim online, and the photos were “strewn about the Internet and spit back at the family members, accompanied by hateful messages.” *Catsouras v. Dep’t of California Highway Patrol*, 181 Cal. App. 4th 856, 863 (2010). In another case, an apartment manager hired an armed thug to “brandish[.]” a “pistol” to scare tenants into moving out of their units. *Jonathan Woodner Co. v. Breeden*, 665 A.2d 929, 935 (D.C. 1995).

This case is does not involve anything resembling such extreme and outrageous conduct. No court has ever upheld an intentional-infliction claim based on the type of mild comments at issue here, and this Court should decline to be the first.

II. THE DERIVATIVE CLAIMS AGAINST THE FOX CORPORATION FAIL

The claims against Defendant Fox Corporation should be dismissed for two reasons. First, they are entirely derivative of the claims against Defendant Scott. The Complaint does not allege any tort committed by the Fox Corporation apart from the actions allegedly taken by Scott. Thus,

because the claims against Scott fail, the claims against the Fox Corporation also fail for that reason alone.

In addition, the Fox Corporation also must be dismissed because it is not a properly named party. The Complaint apparently seeks to impose liability under a theory of *respondeat superior* based on the assumption that the Fox Corporation is Scott's employer, and that it "does business as" ("dba") the Fox News Channel. *See* Compl., at 1. In fact, however, the two are separate corporate entities: Fox News, which is not named as a party in the Complaint, is a subsidiary of the Fox Corporation.⁶ Scott is an employee of Fox News, but not of the Fox Corporation, and the Complaint does not allege otherwise. There is accordingly no basis to impose vicarious liability on the Fox Corporation, which would violate the "deeply ingrained" principle that "a parent corporation . . . is not liable for the acts of its subsidiaries." *United States v. Bestfoods*, 524 U.S. 51, 61 (1998).

CONCLUSION

For the foregoing reasons, all of the claims in the Complaint should be dismissed with prejudice in accordance with Federal Rule of Civil Procedure Rule 12(b)(6).

⁶ *See* Fox Corporation, SEC Form 10, Amendment No. 1, Exhibit No. 21.1, available at <https://www.sec.gov/Archives/edgar/data/1754301/000119312519014909/d624266d1012ba.htm>. "[T]he Court may take judicial notice of public records, including SEC filings." *Sec. & Exch. Comm'n v. RPM Int'l, Inc.*, 282 F. Supp. 3d 1, 11 n.4 (D.D.C. 2017).

Dated: May 20, 2019

Respectfully submitted,

/s/ Michael A. Carvin

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2019 a true and correct copy of the foregoing Defendants' Motion to Dismiss and accompanying papers was filed using the Court's CM/ECF system, which will serve all counsel of record.

/s/ Michael A. Carvin
Michael A. Carvin
Attorney for Defendants

EXHIBIT A

Los Angeles Times

Fox News Chief Executive Suzanne Scott keeps her focus on winning

By STEPHEN BATTAGLIO
APR 03, 2019 | 4:00 AM



Fox News Chief Executive Suzanne Scott in a studio at Fox News headquarters in New York on March 28. (Michael Nagle / For The Times)

In the politically charged environment powered by the Trump White House, Fox News Channel's role in public discourse is more polarizing than ever. Even an error in an on-screen graphic can spark critics to charge the network with misinforming, propagandizing or serving as state TV.

But after 23 years at the network, Fox News Chief Executive Suzanne Scott has learned how to shut out the noise surrounding her — no easy feat when the channel's No. 1 fan, President Trump, is watching for policy advice and emotional sustenance.

<https://www.latimes.com/business/hollywood/la-fi-ct-suzanne-scott-fox-news-20190403-story.html>

“Of course people are going to pay attention to what we’re doing,” she said during a recent conversation in her office at Fox News headquarters in midtown Manhattan. “People always want to shoot at the leader.... But I care about growing our business and keeping us profitable.”

The importance of that task has only increased for Scott. The news network is the centerpiece of Fox Corp., Rupert Murdoch’s new company spun off after its sale of the 21stCentury Fox entertainment assets to Walt Disney Co.

Scott was given the top post in May, after a turbulent period when Fox News was engulfed by a sexual harassment scandal that led to the ouster of its founding chief executive Roger Ailes in 2016 and popular host Bill O’Reilly the following year.

Ailes, who branded established media outlets as liberal enemies, turned Fox News into a powerful and controversial voice for the political right. A former advisor for Republican candidates, he openly voiced disdain for Democrats, even as the head of news organization.

In contrast, the even-keeled Scott, 53, is not driven by ideology. Her voter registration in the northern New Jersey town where she lives with her husband and 13-year old daughter is not affiliated with a political party. Many colleagues are unaware of her political leanings.

“Suzanne runs Fox News as more of a business than as a political machine,” said Washington attorney Robert Barnett, who represents a number of the network’s personalities. “Roger ran it in a completely different way.”

Fox News has been the most-watched cable network for three consecutive years despite the loss of O’Reilly and Megyn Kelly, who left in early 2017. But there have been other challenges.

Liberal media watchdog groups have successfully driven advertisers away from prime-time commentators Tucker Carlson and Laura Ingraham over inflammatory comments they have made, significantly reducing ad revenues for their shows. Scott said the network is standing by them.

“Our viewers trust our hosts and are loyal, passionate followers,” Scott said. “We just cannot cave to political activists or those kinds of groups. We fully support our talent.”

Such loyalty has been demonstrated in the Nielsen ratings since special counsel Robert Mueller’s investigation determined President Trump or his campaign did not collude with the Russians in their efforts to influence the presidential election (although the story is far from over, as Mueller’s full report has yet to be released). Fox News viewing surged in March as prime-time commentators felt vindication for the president they support nightly.

Cable fees still drive income for Fox News, which is expected to generate \$2.95 billion in subscription and advertising revenue in 2019, up 7% from last year. Media analysis firm MoffettNathanson LLC, projects that Fox Corp. will have high single-digit growth from pay-TV revenue over the next five years, largely driven by Fox News, despite the cord-cutting trend.

But Scott is working at expanding Fox News revenue streams by improving its offerings on the web and mobile devices. Fox News Digital had 104 million unique users in February, an increase of 17% from the same month a year ago, according to comScore. She developed Fox Nation, an online streaming service launched in November for dedicated fans who want more unfettered conservative commentary and documentaries. Sign-ups for the service are well ahead of projections, said Scott, who has also expanded the Fox News brand to terrestrial and satellite radio.

Scott has also tried to be an agent of change for the company’s workplace culture. Fox News became ground zero for the #MeToo movement after former anchor Gretchen Carlson filed a harassment lawsuit against Ailes in 2016, which led to his ouster and required a \$20-million settlement.

The company was rocked by more harassment lawsuits and numerous lurid reports describing alleged bad behavior by Ailes, O’Reilly and others.

“I felt devastated for the women who work here,” Scott said. “I wanted to do everything I could to heal this place.”

She had one-on-one meetings with employees about the company's work environment for women and how to improve it.

"It was often uncomfortable and emotional," Scott said. "One of the things that was said to me was, 'How do I explain to my family that I work at Fox News?'"

In some of those discussions, it was necessary for Scott to tell employees she had no knowledge of Ailes' behavior even though she was part of his inner circle. Scott had also worked closely with Bill Shine, a longtime Ailes lieutenant who was pushed out of his role as co-president in May 2017 because of his handling of the scandal.

"I had no clue on what was going on in Roger Ailes' office," Scott said. "I have never had any issues with any sort of harassment myself."

Scott has eradicated the memory of Ailes by overseeing a massive renovation of the entire second floor where his corporate lair was located — part of a \$135-million upgrade of facilities and studios. More than 200 of the network's producers, writers and production assistants have been moved from a bleak basement at 1211 Avenue of the Americas to a bright, airy workspace steps away from where top management is located. Scott and Jay Wallace, president of news, have offices adjacent to Rupert Murdoch and his son Lachlan, who serves as co-chairman of Fox Corp. and has become more involved with the channel.

Women at the company say there is now a process to report inappropriate behavior to human resources, with names and phone numbers of who to reach posted in the restrooms.

"It's a reminder that you don't have to hide in there to cry," said Janice Dean, the longtime meteorologist on "Fox & Friends."

Dean, who recently detailed her own uncomfortable encounters with Ailes in her recent memoir "Mostly Sunny," attested to an improved atmosphere under Scott.

"I don't feel fear anymore," Dean said. "It truly is because of the strong women who work at the company now."

Scott tries to attend a monthly breakfast held for women who work at Fox News. A mentoring program has also been implemented. There are also company-wide meetings where all staffers can air their concerns. Employees previously had scant contact with top management.

“The openness and transparency that she has brought to the job has been quite noticeable,” said daytime news anchor Bill Hemmer.

Scott has been at Fox News since it launched in 1996. She joined as an executive assistant to Chet Collier, a veteran producer who gave Ailes his first TV job on “The Mike Douglas Show” in the 1960s.

Collier was a worldly Boston liberal and the political polar opposite of Ailes. But he understood what viewers liked and passed that along to Scott, who spent hours with him watching audition tapes of prospective anchors and reporters for the channel.

“Chet taught me talent puts themselves on the front lines for this place,” she said. “They need to be well managed and taken care of.”

Scott eventually became producer of Greta Van Susteren’s program “On the Record.” The veteran former Fox News host recommended years ago that Scott be elevated to the executive suite and believes she was the right choice to lead the company in the post-Ailes era.

“She’s smart, she works hard and she didn’t do anything wrong,” Van Susteren said.

While Scott made her bones at Fox News by developing shows for its conservative opinion hosts, Washington anchor Chris Wallace said he is happy with the attention she has given to the journalism side of the operation.

“I feel more supported in being an equal opportunity inquisitor by the new regime than I did in the old regime,” said Wallace, who often goes hard at Trump administration officials who appear on “Fox News Sunday.”

Wallace said the news side is being heard when it complains about occasional ethics breaches by the opinion hosts, such as when Sean Hannity appeared on stage with Trump at a rally before the midterm elections in November.

“We made it clear we were ticked off because we felt it hurt our credibility,” he said.

Wallace added that Scott’s preference is to handle such matters privately.

Scott quietly scaled the ranks at Fox News without much of a profile outside of its headquarters.

She is not a regular New York media-industry parties. On weekends, she serves as a certified YMCA stroke-and-turn official at a New Jersey club where her daughter is a competitive swimmer.

Scott said her steady work ethic came from her parents. Her father ran a trucking business out of the Morristown, N.J., home she grew up. Her 88-year-old mother still works as a real estate agent. It’s why Scott believes she is built for cable’s nonstop news cycle.

“My father was incredibly hardworking — up at three in the morning, working Monday through Saturday,” Scott said. “He never complained. He was the happiest guy on the planet.”

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

)	
Laura Wilson Luhn,)	
)	
Plaintiff)	
)	Civil Action No. 1:19-cv-01180-DLF
v.)	
)	
Suzanne Gunderson Scott, <i>et al.</i> ,)	
)	
Defendants.)	
)	

[PROPOSED] ORDER

Upon consideration of Defendants Suzanne Scott and the Fox Corporation’s Motion to Dismiss, the Motion is hereby GRANTED, and all of Plaintiff Laura Luhn’s claims are dismissed with prejudice.

IT IS SO ORDERED.

Dated: _____

 THE HONORABLE Dabney L. Friedrich
 United States District Judge

The following are to be notified of the entry of this order:

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