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

DAN RATHER,

Plaintiff,

-against-

CBS CORPORATION, VIACOM, INC., LESLIE MOONVES, SUMNER REDSTONE and ANDREW HEYWARD,

Defendants.

Index No. 603121/07

COMPLAINT

Filed on 9/19/07

NEW YORK
COUNTY CLERK'S OFFICE

SEP 19 2007

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Plaintiff, Dan Rather, by his attorneys, Sonnenschein Nath & Rosenthal LLP, for his Complaint against CBS Corporation ("CBS"), Viacom, Inc. ("Viacom"), Leslie Moonves, Sumner Redstone 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 CBS, his employer of 44 years, Viacom, its former parent company, Leslie Moonves, Chief Executive Officer of CBS, Sumner Redstone, Chief Executive Officer of Viacom, and Andrew Heyward, formerly President of CBS News, a division of CBS, for their egregious conduct toward him which constituted breach of contract, fraud, breach of fiduciary duty, *prima facie* tort, tortious interference with contract and interference with prospective economic advantage, that have cost him significant financial loss 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. Defendants' improper responses to the attacks on the Documents 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 Mr. Moonves, Mr. Redstone and/or Mr. Heyward. Mr. Moonves' wrongful acts were, at least in part, motivated by personal interests contrary to the interests of CBS. The wrongful acts by Viacom described herein were directed by Mr. Redstone.

7. Following the Broadcast, CBS announced that it was conducting a thorough independent investigation into the underlying story of 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 the defendants as an excuse for wrongful acts which they committed against him.

8. Central to defendants' 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 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, on November 3, 2004, the day after George W. Bush was re-elected as President, CBS informed Mr. Rather that he was being terminated as

anchor of the *CBS Evening News*. 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 defendants' scheme to appease angry government officials, in addition to removing Mr. Rather as anchor of the *CBS Evening News*, 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* 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, and in breach of Mr. Rather's employment agreement with CBS which required that CBS so employ Mr. Rather as a full time correspondent on those programs, CBS provided him with few assignments, little staff, very little air time, and did not permit him to cover important stories.

11. Moreover, in order to induce Mr. Rather to refrain from defending his reputation by making public statements concerning the Broadcast, its aftermath and CBS's failure to allow him to cover important news, CBS, Mr. Moonves and Mr. Heyward 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 that his contract would be extended. In reliance upon such representations, which CBS knew were false, and out of a sense of deep loyalty to CBS News, Mr. Rather complied with CBS requests throughout the almost two-year period between the Broadcast and his departure from CBS, during which time Mr. Rather refrained from defending himself or others at CBS. However, throughout this period, others at CBS made disparaging public statements concerning Mr. Rather and the Broadcast, which statements defendants did not 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 CBS described herein.

13. The defendants' behavior violated Mr. Rather's employment agreement with CBS, violated the fiduciary duties owed by CBS to Mr. Rather under his employment agreement and aspects of his long relationship with CBS, constituted fraud, prima facie tort, tortious interference with contract and interference with prospective economic advantage, all of which have greatly damaged Mr. Rather. 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. CBS is a corporation organized under the laws of Delaware with its principal place of business at 51 West 52nd Street, New York, New York.

16. Viacom is a corporation organized under the law of Delaware with its principal place of business at 1515 Broadway, New York, New York. From May 4, 2000 to December 31, 2005, CBS was a wholly-owned subsidiary of Viacom.

17. Leslie Moonves is a resident of both the City, County and State of New York, and of Los Angeles, California, 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.

18. Sumner Redstone is a resident of Los Angeles, California. He was, at all relevant times, the Chief Executive Officer of Viacom, and is subject to this Court's jurisdiction pursuant to CPLR 301 and 302.

19. Andrew Heyward is a resident of the County of Westchester, State of New York.

JURISDICTION AND VENUE

20. 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, where CBS and Viacom both do business and maintain their principal offices.

FACTS

Dan Rather

21. 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 Lyndon Johnson. 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.

22. 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.

23. 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*, 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 News Radio. 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*.

24. 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 was seriously damaged by the defendants' wrongful acts described here.

Employment Agreement

25. 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.

26. The Agreement at all times provided, *inter alia*, that Mr. Rather would be employed as the "Anchor" or "Anchorman" for the *CBS Evening News*, 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*, 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.

27. In consideration for the foregoing, the Agreement at all times provided that Mr. Rather's employment with CBS would be "exclusive", except that Mr. Rather was free to write and lecture. In addition, Mr. Rather was precluded from seeking employment with third parties until six months prior to the expiration of the Agreement. *See* Agreement, 4/10/02 extension, ¶ 1(g)(h).

28. In addition to its obligation to pay Mr. Rather financial compensation, a central aspect of the Agreement was the obligation of CBS to ensure that Mr. Rather would be given extensive "exposure" on television, and that Mr. Rather would cooperate in maximizing that exposure. 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 campaign, 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* (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).

29. The Agreement provides that CBS shall have the right to remove Mr. Rather as sole Anchor of the *CBS Evening News* 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).

30. The Agreement further provides that, in the event CBS removes Mr. Rather as sole Anchor of the *CBS Evening News* 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 April 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).

31. 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).

The Relationship Between CBS and Mr. Rather

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*. 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.

33. By dint of the Agreement, the long working relationship between Mr. Rather and CBS, the obligations of CBS to maximize Mr. Rather's television exposure for the mutual benefit of the parties, and the numerous promises and assurances made by CBS to Mr. Rather as described herein, at all relevant times CBS owed the duties of a fiduciary toward Mr. Rather.

The Summer 2004 Negotiation and the Promise of Good Faith Negotiations

34. 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.

35. In the Summer of 2004, Mr. Leibner began contract renewal negotiations with Andrew Heyward, then president of CBS News. Prior thereto, it had been agreed that Mr. Rather

would continue as anchor of the CBS *Evening News* until March 9, 2006, which would represent 25 years' service in that position, and that thereafter he would serve as a full-time Correspondent on *60 Minutes* 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.

36. 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.

37. Although this agreement was not reduced to writing, 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."

Abu Ghraib

38. 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.

39. 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 editing and vetting process of the Abu Ghraib story. However, for weeks, they refused to grant permission to air the story, continuously insisting that it lacked sufficient substantiation. As Mr. Rather and Ms. Mapes provided each requested verification, Mr. Heyward and Ms. West continued to "raise the goalposts," insisting on additional substantiation.

40. Even after obtaining nearly a dozen, now notorious, photographs, which made it impossible to deny the accuracy of the story, Mr. Heyward and Ms. West 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.

41. 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 and Ms. West approved the airing 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*.

The Bush Air National Guard Story

42. 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.

43. 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").

44. 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.

45. 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.

46. Ms. Mapes called Mr. Rather on Sunday, September 5, to ask him to leave immediately for Texas to interview Lieutenant 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. Cl. 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.

47. The following day, Labor Day, Monday, September 6, Mr. Rather focused on his duties as Managing Editor and Anchor of the *CBS Evening News*, 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.

48. 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.

49. 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.

50. 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.

51. 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

52. 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.

53. 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.

54. 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. Relying on these assurances, Mr. Rather complied and did not respond to personal attacks on his journalistic integrity.

55. 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, 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, also at Mr. Heyward's direction, Mr. Rather interviewed Lt. Cl. Killian's secretary, Ms. Knox, who claimed she had not typed the documents, but believed their content to be true.

56. On September 20, 2004, Mr. Heyward and Mr. Schwartz decided that CBS should completely change its position and issue an apology for the Broadcast. Although Mr. Heyward himself had undertaken personal responsibility for the vetting of the story, he instructed Mr. Rather to read a public apology, written by Mr. Schwartz, for both Mr. Rather's and CBS's handling of the story. Despite his own personal feelings that no apology from him was

warranted, Mr. Rather read the apology as instructed. Mr. Rather also, as instructed, did not publicly defend the story.

57. 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. Heyward and Mr. Schwartz again assured Mr. Rather that CBS would stand by and defend him against all attacks. Mr. Rather expressed his opinion that the interview was inappropriate, and that further apologies were not warranted, but, again, he complied with the instructions from his superiors.

58. By coercing Mr. Rather publicly to apologize and take responsibility for the airing and vetting of the story, CBS intentionally caused the public and the media to a tribute 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 Yet Still Exonerates Mr. Rather

59. On or about September 22, 2004, CBS announced the appointment of a so-called "Independent Review Panel" ("Panel"), purportedly to investigate and report on all aspects of the Broadcast, in a thorough and unbiased manner.

60. In fact, the Panel was not selected by CBS with a desire that it be independent. 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.

61. 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 U.S. Senator from Pennsylvania in a campaign supported by President George H. W. Bush and run by President George W. Bush's chief political advisor, Karl Rove. The second member of the Panel was Louis D. Boccardi, former Chief Executive Officer of the Associated Press. CBS paid all fees and expenses for the Panel, its staff and counsel.

62. 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.

63. 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.

64. 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 he would personally retain a private investigator to pursue them. 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. In reliance on Mr. Heyward's aforesaid promise, Mr. Rather did not retain any investigator.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. Despite CBS's retaining a partisan Panel member, 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.

75. 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.

76. 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.

CBS Removes Mr. Rather From The Anchor Chair

77. On November 3, 2004, the day after President Bush was elected to a second term, Mr. Moonves advised Mr. Leibner that CBS was unilaterally removing Mr. Rather as sole Anchor of the *CBS Evening News*. Approximately one week thereafter, Harvey Nagler, the CBS officer in charge of the CBS Radio News, who reported to Mr. Heyward, told Mr. Rather 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."

78. Despite CBS's highly publicized efforts to appear neutral by appointing the Panel to investigate the Broadcast and its aftermath, and notwithstanding Mr. Heyward's and Mr. Schwartz's assurances 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* two months before the Panel issued its report, which found no wrongdoing on the part of Mr. Rather in connection with

the production of the story. 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."

Post Anchor Period

79. On March 9, 2005, Mr. Rather delivered his last broadcast as Anchor of the *CBS Evening News*. In accordance with the terms of the Agreement, CBS was required to assign Mr. Rather as a "full-time correspondent" on *60 Minutes II,* or if at any time *60 Minutes II* was canceled, to assign him as a correspondent on *60 Minutes* on a regular basis. *See* Agreement 4/10/02 extension, ¶ 1(f). 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).

80. Despite its contractual obligations to Mr. Rather, CBS never had any intention of employing him on *60 Minutes II* or *60 Minutes* in accordance with the requirements of the Agreement. However, CBS also did not wish to immediately pay him the sums due him under the contract, or to allow him freedom to seek other employment where he might compete with CBS.

81. Accordingly, from March 9, 2005 until May 2006, CBS nominally assigned Mr. Rather as a correspondent on *60 Minutes II*, and when that program was cancelled, on *60 Minutes*, but only allowed him to function in a very limited capacity on either program. He was provided with very little staff support, very few of his suggested stories were approved, editing

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

82. Throughout this period, he was continuously instructed by CBS not to publicly discuss the Broadcast, and he followed these directions because he relied upon CBS's false 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.

83. 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, which CBS allowed to go unanswered.

84. 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*, CBS management 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.

85. After Mr. Rather was removed as Anchor of the *CBS Evening News,* 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 has 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 disastrous Hurricane Katrina, thus furthering its desire to keep Mr. Rather off the air.

86. 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, 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.

87. In May 2006, Mr. Moonves and Mr. McManus informed Mr. Leibner that CBS wanted a "fresh start" and, notwithstanding CBS's express obligations to Mr. Rather and repeated assurances that he would be given "air time," expressed their desire that Mr. Rather's contract be terminated. Such termination was effected as of June 16, 2006.

FIRST CAUSE OF ACTION

(Breach of Contract Against CBS)

88. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein.

89. CBS has substantially and materially breached the Agreement described herein.

90. CBS violated, *inter alia,* paragraph 1, sections (f) (g) and (h), 4/10/02 amendment of the Agreement when it did not assign Mr. Rather as the Agreement obligated it to do after it removed Mr. Rather from the anchor chair.

91. By reason of the foregoing, Mr. Rather is entitled to compensatory damages in an amount to be determined at trial, but not less than $20 million.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty Against CBS)

92. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein.

93. By virtue of, *inter alia*, the language of the Agreement, Mr. Rather and CBS's four-decade history, Mr. Rather's extraordinary contributions to CBS, his universal standing as the face of CBS News, and specific promises made by CBS to Mr. Rather, CBS had a special relationship that imposed fiduciary duties upon CBS toward Mr. Rather.

94. CBS breached its fiduciary obligations to Mr. Rather by, *inter alia*, ostracizing Mr. Rather; damaging his reputation; keeping him off the air; and preventing him from restoring his reputation.

95. CBS's conduct was willful and malicious.

96. As a direct and proximate result of CBS's breach of its fiduciary duties, 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.

THIRD CAUSE OF ACTION

(Fraud Against CBS, Moonves and Heyward)

97. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein.

98. CBS, Mr. Moonves and Mr. Heyward represented to Mr. Rather, *inter alia*, as follows:

a) that CBS intended to conduct a fair and impartial investigation of the Broadcast;

b) that at all times CBS would take all necessary and appropriate steps to preserve and enhance Mr. Rather's reputation;

c) that CBS intended at all times to fully utilize Mr. Rather's abilities, experience, and talents including, *inter alia*, as a full time correspondent on *60 Minutes* and *60 Minutes II*;

d) that if Mr. Rather refrained from retaining a private investigator to continue the investigation of the story underlying the Broadcast that CBS would retain such an investigator and make the findings available to Mr. Rather; and

e) that CBS would conclude an extension of Mr. Rather's contract in accordance with previous discussions between Mr. Leibner and Mr. Moonves.

99. 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 in order to protect his reputation. These false representations were made to enable CBS, Mr. Moonves and Mr. Heyward to more easily diminish Mr. Rather's stature and destroy his reputation.

100. At the times these representations were made, CBS, Mr. Moonves and Mr. Heyward had no intention of fulfilling these promises, and knew them to be false.

101. 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.

102. As a direct and proximate result of CBS's knowing misrepresentations, Mr. Rather has suffered monetary damages, as well as harm to his public reputation.

103. CBS's, Mr. Moonves' and Mr. Heyward's conduct was willful and malicious.

104. As a direct and proximate result of 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.

FOURTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing Against CBS)

105. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein.

106. Since the Fall of 2004, CBS has continuously acted to Mr. Rather's detriment by, *inter alia*, directing him to publicly apologize, and thus accept the blame, for CBS's mishandling of the Broadcast, despite his blameless conduct; purposefully ostracizing Mr. Rather by not utilizing his services on a regular basis as a Correspondent on *60 Minutes* and *60 Minutes II*, including refusing to accept his story ideas and air his stories; and discontinuing his radio pieces.

107. CBS acted in bad faith by purposefully marginalizing Mr. Rather, in contravention of the letter and spirit of the Agreement, and in doing so, has breached the covenant of good faith and fair dealing implied in the Agreement.

108. As a direct and proximate result of CBS's breach of the implied covenant of good faith and fair dealing in the Agreement, Mr. Rather is entitled to compensatory damages in an amount to be determined at trial, but not less than $20 million.

FIFTH CAUSE OF ACTION

(Tortious Interference with Contract Against Viacom, Redstone, Moonves and Heyward)

109. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein.

110. A valid contract existed between Mr. Rather, and his employer of more than four decades, CBS. Viacom, as CBS's parent company from 2000 to 2005, as well as Mr. Redstone, Mr. Moonves and Mr. Heyward had knowledge of this contract.

111. By the acts described herein, which were spurred by Mr. Redstone and Viacom's desire to curry favor with the White House, Viacom, Mr. Redstone, Mr. Moonves and Mr. Heyward intentionally procured CBS's breach of its contract with Mr. Rather.

112. Viacom's, Mr. Redstone's, Mr. Moonves' and Mr. Heyward's conduct was willful and malicious.

113. As a direct and proximate result of these defendants' aforesaid tortious interference with Mr. Rather's contract with CBS, 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.

SIXTH CAUSE OF ACTION

(Tortious Interference With Prospective Business Relations Against All Defendants)

114. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein.

115. The Agreement at all times provided that Mr. Rather's employment with CBS would be "exclusive", and that Mr. Rather was precluded from seeking employment with third parties until no earlier than six months prior to the expiration of the Agreement.

116. By nominally maintaining that the Agreement was in force, at least as early as March 2005, notwithstanding its own refusal to comply therewith, defendants prevented Mr. Rather from seeking and/or obtaining other employment and also from appearing on other television news programs.

117. Defendants breached their duty not to interfere with Mr. Rather's right to obtain employment and repair his reputation by wrongfully preventing him from seeking other employment and appearing on other television broadcasts.

118. As a direct and proximate result of defendants' tortious interference with Mr. Rather's right to obtain employment and repair his reputation, 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.

SEVENTH CAUSE OF ACTION

(*Prima Facie* Tort Against All Defendants)

119. Plaintiff repeats and realleges paragraphs 1 though 87 as if fully set forth herein

120. Upon information and belief, the deceitful acts described in the foregoing paragraphs on the part of CBS and Mr. Moonves and Mr. Heyward, and promoted by Viacom and Mr. Redstone, were motivated by an intention to damage Mr. Rather, in order to curry favor with the Bush administration.

121. The chain of events that led to Mr. Rather's termination and the damage to his reputation, the lies Mr. Moonves, Mr. Heyward and other executives told him in the aftermath of the Broadcast that led him to publicly and personally apologize, CBS' biased investigation, and the lies he was told regarding his employment, were calculated by Mr. Moonves, Mr. Heyward

and others at CBS, and promoted or directed by Mr. Redstone and Viacom to damage Mr. Rather's career and reputation.

122. CBS had knowledge of the derogatory statements concerning Mr. Rather made by its employees, including those made by Walter Cronkite, Mike Wallace, Andy Rooney and others, and by permitting these statements to continue, significantly contributed to the barrage of bad press Mr. Rather faced following the Broadcast.

123. As a direct and proximate result of defendants' tortious interference with Mr. Rather's right to obtain employment and repair his reputation, 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.

WHEREFORE, plaintiff Dan Rather demands judgment, as follows:

a) On the First Cause of Action against CBS, compensatory damages in an amount to be determined at trial, but not less than $20 million, together with interest thereon;

b) On the Second Cause of Action against CBS, compensatory damages in an amount to be determined at trial, but not less than $20 million together with interest thereon, and punitive damages in an amount to be determined at trial, but not less than $50 million;

c) On the Third Cause of Action against CBS, Moonves and Heyward, compensatory damages in an amount to be determined at trial, but not less than $20 million together with interest thereon, and punitive damages in an amount to be determined at trial, but not less than $50 million;

d) On the Fourth Cause of Action against CBS, compensatory damages in an amount to be determined at trial, but not less than $20 million together with interest thereon;

e) On the Fifth Cause of Action against Viacom, Redstone, Moonves and Heyward, compensatory damages in an amount to be determined at trial, but not less than $20 million together with interest thereon, and punitive damages in an amount to be determined at trial, but not less than $50 million;

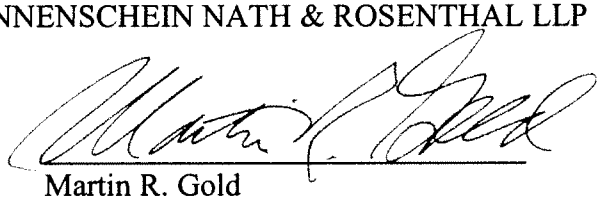
f) On the Sixth Cause of Action against all defendants, compensatory damages in an amount to be determined at trial, but not less than $20 million together with interest thereon, and punitive damages in an amount to be determined at trial, but not less than $50 million;

g) On the Seventh Cause of Action against all defendants, compensatory damages in an amount to be determined at trial, but not less than $20 million together with interest thereon, and punitive damages in an amount to be determined at trial, but not less than $50 million;

h) On all causes of action, for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 19, 2007

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