

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
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File Number:	NSD673/2022
File Title:	LACHLAN KEITH MURDOCH v PRIVATE MEDIA PTY LTD ACN 102 933 362 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



## INTERLOCUTORY APPLICATION

No. NSD 673 of 2022

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD (ACN 102 933 362)**

First Respondent

**BERNARD KEANE**

Second Respondent

**PETER FRAY**

Third Respondent

To the Respondents:

The Applicant applies for the interlocutory orders as set out in this Application.

The Court will hear this Application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

**Time and date for hearing:** at                      on                      December 2022

**Place:** Law Courts Building, 184 Phillip Street, Sydney NSW 2000



Date: December 2022

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Signed by an officer acting with the authority  
of the District Registrar



### **Interlocutory orders sought**

1. Pursuant to Rule 9.05 *FCR*, Eric Beecher be joined as the fourth respondent to the proceedings.
2. Pursuant to Rule 9.05 *FCR*, William Hayward be joined as the fifth respondent to the proceedings.
3. Pursuant to Rule 8.21 *FCR*, the Applicant be granted leave to amend the Originating Application in the form annexed as **A** to this application.
4. Pursuant to Rule 16.53 *FCR*, the Applicant be granted leave to file the Amended Statement of Claim annexed as **B** to this application.
5. To the extent the Court considers it necessary, time for the filing of the Amended Statement of Claim be abridged pursuant to s12B(3) of the *Defamation Act 2005* (NSW), because it is just and reasonable to do so.

### **Service on the Respondents**

It is intended to serve this application on each of the First, Second and Third Respondents.

Date: 13 December 2022

A handwritten signature in black ink, which appears to read 'John Churchill', is written over a light blue rectangular background.

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Signed by John Churchill  
Solicitor for Applicant

## Annexure "A" to Interlocutory Application



Form 15  
Rules 8.01(1); 8.04(1)

### **Amended Originating Application**

No. NSD 673 of 2022

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD (ACN 102 933 362)**

First Respondent

**BERNARD KEANE**

Second Respondent

**PETER FRAY**

Third Respondent

**ERIC BEECHER**

Fourth Respondent

**WILLIAM HAYWARD**

Fifth Respondent

To the respondents:

The applicant applies for the relief set out in this Application.

The Court will hear this Application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**



**Place:** Levels 17-22, Law Courts Building, 184 Phillip Street, Sydney, 2000, NSW;

Date:

.....  
Signed by an officer acting with the authority  
of the District Registrar



## Details of claim

On the grounds stated in the Amended Statement of Claim, the applicant claims:

1. Damages, including aggravated damages.
2. An order that the Article (as defined in paragraph 5 of the Statement of Claim), or any matter in substantially the same form, including the Reposted Article (as defined in paragraph 5A of the Amended Statement of Claim) be permanently removed from:
  - 2.1. the first respondent's website (located at the URL address [www.crikey.com.au](http://www.crikey.com.au)), and any archive or other website(s) associated with that website;
  - 2.2. any other website operated or controlled by the first respondent; and
  - 2.3. any social media account operated or controlled by the respondents or any of them.
3. An order that the respondents, and each of them, be permanently restrained from publishing any of the Imputations (as defined in paragraph 7 of the Statement of Claim), or any imputation that does not differ in substance from such Imputations, or any of them.
4. Costs pursuant to s43 of the *Federal Court of Australia Act 1976*.
5. Interest pursuant to ss 51A and 52 of the *Federal Court of Australia Act 1976*.
6. Such further or other orders as the Court deems fit or thinks necessary.

## Applicant's address

The applicant's address for service is:

**Place:** John Churchill, Level 3, 32 Martin Place, Sydney, NSW 2000



**Email:** jmc@johnchurchill.com.au

The applicant's address is c/- John Churchill, Level 3, 32 Martin Place, Sydney, NSW 2000

**Service on the Respondent**

It is intended to serve this application on all Respondents.

The first respondent's address is Level 6, 22 William Street, Melbourne, VIC 3000

The second respondent's address is Level 6, 22 William Street, Melbourne, VIC 3000

The third respondent's address is Level 6, 22 William Street, Melbourne, VIC 3000

The fourth respondent's address is Level 6, 22 William Street, Melbourne, VIC 3000

The fifth respondent's address is Level 6, 22 William Street, Melbourne, VIC 3000

Date: December 2022

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Signed by John Churchill  
Lawyer for the applicant



## SCHEDULE



No. NSD 673 of 2022

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD (ACN 102 933 362)**

First Respondent

**BERNARD KEANE**

Second Respondent

**PETER FRAY**

Third Respondent

**ERIC BEECHER**

Fourth Respondent

**WILLIAM HAYWARD**

Fifth Respondent

## Annexure “B” to Interlocutory Application



Form 17  
Rule 8.05(1)(a)

### **AMENDED STATEMENT OF CLAIM**

No. NSD 673 of 2022

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**LACHLAN KEITH MURDOCH**

Applicant

**PRIVATE MEDIA PTY LTD (ACN 102 933 362)**

First Respondent

**BERNARD KEANE**

Second Respondent

**PETER FRAY**

Third Respondent

**ERIC BEECHER**

Fourth Respondent

**WILLIAM HAYWARD**

Fifth Respondent

#### **Applicant**

1. The applicant (**Murdoch**) is and was:

1.1 a well-known Australian;

1.2 a business person with a substantial reputation throughout Australia and elsewhere;

1.3 the CEO and Executive Chairman of Fox Corporation.

#### **Respondents**



2. The first respondent (**Private Media**) is and was:

- 2.1. a corporation liable to be sued in its corporate name and style;
- 2.2. a privately owned company whose shareholders include persons of substantial means;
- 2.3. the publisher of the content on the website Crikey, at the URL address [www.crikey.com.au](http://www.crikey.com.au) (**Crikey website**);
- 2.4. the publisher of newsletters by email to Crikey subscribers;
- 2.5. the publisher of the content on an account on the Twitter platform with the handle "@crikey\_news" (**Crikey Twitter account**), which at the date of this pleading, was followed by over 195,000 Twitter users;
- 2.6. the publisher of the content on an account on the Facebook platform titled "Crikey" (**Crikey Facebook account**), which at the date of this pleading, was followed by over 82,200 Facebook users and liked by over 84,000 Facebook users;
- 2.7. the publisher of the content on an account on the Instagram platform with the handle "crikey.news" (**Crikey Instagram account**), which at the date of this pleading, was followed by over 19,400 Instagram users;
- 2.8. the publisher of the content on an account on the LinkedIn platform with the handle "Private Media" (**Private Media LinkedIn account**), which at the date of this pleading, was followed by over 3,440 LinkedIn users.



3. The second respondent (**Keane**) is and was:
  - 3.1. the political editor for the Crikey website;
  - 3.2. an employee and/or agent of Private Media;
  - 3.3. a contributor of material published on the Crikey website;
  - 3.4. the publisher of an account on the Twitter platform with the handle “@BernardKeane” (**Keane Twitter account**), which at the date of this pleading, was followed by over 105,000 Twitter users.
4. The third respondent (**Fray**) is and was:
  - 4.1. the editor-in-chief for the Crikey website;
  - 4.2. an employee and/or agent of Private Media;
  - 4.3. a contributor of material published on the Crikey website;
  - 4.4. a publisher of material appearing on the Crikey website.
- 4A. The fourth respondent (**Beecher**) is and was:
  - 4.5. the co-Founder of Private Media;
  - 4.6. the Chairperson of Private Media;
  - 4.7. an employee and/or agent of Private Media;
  - 4.8. a major shareholder of Private Media;
  - 4.9. a guiding mind of Private Media.
- 4B. The fifth respondent (**Hayward**) is and was:
  - 4.10. the CEO of Private Media;
  - 4.11. an employee and/or agent of Private Media;
  - 4.12. a guiding mind of Private Media.

## **Article**

5. On or about 29 June 2022 and thereafter, Private Media, Keane and Fray published in the Australian Capital Territory and in each of the States and the Northern Territory of



Australia, an article on the Crikey website titled “*Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator*” (**Article**):

*29 June publication*

- 5.1. A copy of the Article as it appeared on the Crikey website is **Schedule A**.
- 5.2. The Article was written by Keane, approved and/or edited by Fray and uploaded to the Crikey website by Private Media, from which it was downloaded and read by persons throughout Australia unknown to Murdoch.
- 5.3. The Crikey website is a mass media website available for publication in the Australian Capital Territory and every other State and Territory of Australia.
- 5.4. The Crikey website has an audience of at least 175,000 unique readers per month and at least 15,000 paid subscribers.
- 5.5. The Crikey website is a subscription website, the content of which is generally only accessible to such subscribers.
- 5.6. The Article was tagged as “Unlocked”, meaning that it was accessible to and able to be downloaded and read by any viewer of the Crikey website, for free, whether or not they had a subscription to the Crikey website.
- 5.7. The Article was promoted on the Crikey website and social media as FREE TO READ.
- 5.8. The Article appeared on the Home page of the Crikey website at the top of the page.
- 5.9. The Article attracted 71 comments on the Crikey website on about 29 and 30 June 2022.
- 5.10. Private Media promoted the Article and caused the Article to be republished on its social media accounts:
  - (a) On or about 29 June 2022, Private Media published a tweet at about 11:45am on the Crikey Twitter account, which contained a link to the Article and:
    - i. attracted 7 comments, 62 retweets and 108 likes;
    - ii. was deleted on 5 July 2022.

(b) On or about 29 June 2022, Private Media published a tweet at about 9:15pm on the Crikey Twitter account, which contained a link to the Article and:

- i. attracted 1 comment, 6 retweets and 23 likes;
- ii. was deleted at about 4:30pm on 30 June 2022.

(c) On or about 29 June 2022, Private Media published a post at about 12:28pm on the Crikey Facebook account, which contained a link to the Article and:

- i. attracted 29 comments, 16 shares and 425 reactions;
- ii. was deleted at about 4:30pm on 30 June 2022.

(d) On or about 29 June 2022, Private Media published a post on the Crikey Instagram account, which referred to the Article and directed readers to a link to the Crikey website at the top of the Instagram page.

5.11. On or about 29 June 2022, Private Media and Fray promoted the Article to its thousands of subscribers in its newsletter which was distributed by email.

5.12. On or about 29 June 2022, Keane republished the Article on the Keane Twitter account at about 11:45 by retweeting the Crikey Twitter account post, which contained a link to the Article and:

- i. attracted comments, 59 retweets and 107 likes;
- ii. was deleted at a time unknown after 4 July 2022.

5.13. At about 4:30pm on 30 June 2022, the Article was removed from the Crikey website.

5.13aa In the premises of the facts pleaded above and below in paragraphs 5A and 5B, it is to be inferred many hundreds of thousands of persons in each State and Territory of Australia have downloaded and read, commented, shared and reacted to the Article, and/or the republication of it on social media and on the Crikey website as the Reposted Article and will continue to download read, comment, share and react to the Article in the form of the Reposted Article, unless it is deleted from the Crikey website and any other platform.

## Lachlan Murdoch Campaign

5A. From about early July 2022, Private Media, Fray, Beecher and Hayward contrived a scheme to improperly use the complaint by Murdoch about the Article to generate subscriptions to Crikey and thus income to Private Media under the guise of defending public interest journalism:

5.13a On or about 4 July 2022 Fray and Beecher spoke and considered that they should escalate their dispute with Murdoch and they shared their views on this issue shortly thereafter with Hayward during video meetings on about 5 and 7 July 2022.

5.13b On or about 22 or 23 July 2022 Fray, Beecher and Hayward spoke and Fray proposed a story slate on Murdoch that involved a roll out of stories over a series of days. From about those dates or shortly before or thereafter, Private Media, Beecher, Hayward and Fray:

(a) had no intention of engaging in good faith negotiations with Murdoch to resolve the dispute about the Article;

(b) intended to commercialise that dispute to generate profits;

(c) sought to cause offence to Murdoch in order that he not resolve the dispute;

(d) intended to falsely claim that they had been "*intimidated and bullied*";

(e) intended to increase subscriptions by claiming that they had been dragged into a "*David v Goliath*" battle;

(f) intended to claim that being unfairly sued was causing a risk to the financial viability of Crikey;

(g) elected to not make, or were otherwise not entitled to make, a claim on Private Media's insurance for defamation claims given their intention to commercialise Murdoch's legal dispute, which would have the short term effect of allowing for a Go Fund Me campaign and ultimately have the effect of Private Media profiting long term.

5.13c On 25 July 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Beecher emailed Fray and Hayward and proposed a story slate about Murdoch that involved an initial 7-8 days of stories including the publication of all legal letters, a story on Australian

defamation laws versus US laws by Michael Bradley (**Bradley**), Crikey's his with Murdoch, and other articles.

- 5.13d On 26 July 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Bradley introduced Beecher to Populares, which markets itself as an “*impact consultancy*” public relations firm that builds “*changemaking strategies to engage people for social impact and political engagement into the conscientious corporate space*” and “*develop winning strategies for their brand, campaign, or issue*”.
- 5.13e On 27 July 2022 Bradley sent an “*Offer to make amends*” to Murdoch’s solicitor described further in paragraph 13, below. Having regard to the matters set out in paragraph 5 of this pleading and the fact that the “*offer*” was open for 28 days (namely until 24 August), that “*offer*” on the part of each of Private Media (by its guiding minds Beecher and Hayward), Keane and Fray was not intended for the purpose of making amends or attempting to do so, drafted with the intention that it be published on the Crikey website or otherwise publicised, intended to offend Murdoch and sent in bad faith.
- 5.13f On 1 August 2022 Bradley drafted a letter to Murdoch’s solicitor that had been redrafted by Bradley to “*be far more rude*” and make Murdoch’s solicitor’s “*head explode*”. He also advised Fray, Beecher and Hayward that they could publish the content of the correspondence between the parties (**Bradley Advice**).
- 5.13g On about 1 August 2022 Beecher engaged in preliminary discussions with Populares to advise Private Media as to the best “*campaign approach*” to exploit the dispute with Murdoch in order to maximise subscriber numbers.
- 5.13h Later on 1 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Hayward and Fray had discussions with Populares, and Fray followed up that meeting with an email to Populares annexing the Article, the correspondence between the parties, the Bradley Advice, and the draft “*rude*” letter that Bradley had redrafted and circulated earlier that day.
- 5.13i On 1 August 2022, after their discussions with Populares, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Beecher shared a document with Fray and Hayward called “LACHLAN MURDOCH CAMPAIGN” which, amongst other matters:
- (a) proposed “*possible tactics*” including sending letters to “*key influencers*” (including former politicians and judges), crowd funding, “*privately briefing*



social media influencers” and paid marketing of the dispute with Murdoch in Australia and the USA;

- (b) set out “talking points” about Crikey being a “tiny independent news publisher”, asserting that the Article was “public interest journalism” and claiming that Murdoch was trying to shut Crikey down by bringing a claim that he could not bring in the USA; and
- (c) listed an 8 day potential content slate for the Crikey platforms which included the reposting of the Article, publication of the correspondence between the parties, an article by Michael Bradley about defamation laws, articles by former Prime Ministers Kevin Rudd and Malcolm Turnbull, interviews with lawyers and ex-judges and articles about Murdoch and companies associated with him.

5.13j On 1 August 2022 Hayward suggested in an email to Fray and Beecher that the campaign, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, have Crikey claim “Murdoch wants to shut down Crikey!”, they set up a Go Fund Me and a petition and sell merchandise with the purpose of supporting the sustainability of Crikey over the long term. Those ideas were shortly thereafter added to the LACHLAN MURDOCH CAMPAIGN document referred to in the preceding sub-paragraph.

5.13k On 4 August 2022, Will Hayward formally engaged Populares to advise on the campaign, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain.

5.13l On 5 August 2022 Beecher sent an email to Fray and Hayward in which he listed a first day story plan for the Lachlan Murdoch Campaign, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, including the publication of the letters between the parties and proposed words to mock Murdoch’s solicitor.

5.13m On 8 August 2022 Hayward sent an email to Populares in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain:

- (a) providing it with the correspondence between the parties;
- (b) providing it with a draft of the next letter that Bradley intended to send to Murdoch’s solicitor;

(c) providing it with Crikey's "current publishing plan for day 1" which included the publication of all correspondence between the parties, an article by Bradley about defamation reform and other articles;

(d) stating "We do feel now it is unlikely that they are going to issue a writ. This concerns me – it might be the case that we publish and there is limited interest. Can you have a think about whether this is likely, and what we can do for maximum impact",

thus demonstrating that Private Media, Hayward, Beecher and Fray did not believe that Murdoch intended to sue them and sought to continue the legal correspondence through their lawyer Bradley for the improper purpose of agitating and escalating a dispute that had effectively concluded in order to obtain a commercial benefit by attracting publicity to Crikey resulting in the increase of subscriptions.

5.13n On 8 August 2022 Hayward, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, responded to Beecher's email in the sub-paragraph 5.13l and copied Fray and wrote:

*"Yes, for me this works well.*

*Which of the currently proposed articles is the lead? Which is the one that will set Twitter on fire?"*

5.13o On 9 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Hayward proposed an article as part of the Lachlan Murdoch Campaign that complained that Crikey received a quote of over \$2M for legal costs and would not survive running and losing the defence of any proceedings in the Federal Court (the article that was ultimately published on 22 August, described below, increased the figure to \$3M).

5.13p On 11 August 2022 Populares produced a marketing plan and advice which included the following recommendations to further the scheme to improperly use the complaint by Murdoch about the Article for commercial gain:

(a) in order for the Lachlan Murdoch Campaign to be successful, Murdoch would need to launch a defamation action against Private Media, which would be "a notable escalation and a tangible action that could provide the foundation for interest in the conflict";

(b) to think "globally", by generating interest in the dispute in the US media;

- (c) to frame the narrative of the dispute on the alleged degree to which Fox News/Murdoch is complicit in the events of January 6 rather than the degree to which Crikey did/did not defame Murdoch;
- (d) to frame the reader reaction: that the best way to support Crikey and to take a stand against Murdoch is to buy a subscription to Crikey;
- (e) to make any legal proceeding brought by Murdoch uncomfortable and potentially more embarrassing than the original publication;
- (f) to suggest that Murdoch's motivations behind his complaint are not genuine;
- (g) to present a Crikey subscription as a “*values-based action*”, not in terms of the usual value proposition for the reader of performing a useful service to them such as the collection and presentation of news and analysis;
- (h) pitching Beecher or Fray to US cable news outlets (such as CNN or MSNBC) and print media (such as the New York Times or the Washington Post) and in the UK to Sky UK (on the basis that it is no longer owned by “*the Murdochs, just for an extra bit of delicious irony*”);
- (i) to involve “*partner organisations*” in the Lachlan Murdoch Campaign, such as Media Matters for America, GetUp and Australians for a Murdoch Royal Commission;
- (j) to develop a suite of advertising content to deploy across Private Media's owned channels (including on Facebook and Instagram) to drive subscribers and casual browsers to Crikey content, including by boosting news of Crikey articles removed from behind the paywall;
- (k) to drive supporters through a “*low barrier to entry*” and then to “*take them on the journey*” by having them sign petitions, donate to support the campaign “*in the form of a Crikey Subscription*”, share the petition or subscription with friends on social media so as to maximise subscriptions and have the Facebook advertising campaign subsidise itself;
- (l) to enlist the support of academics, high profile defamation lawyers and media commentators to elevate the issue in the mind of the audience as being bigger than one media outlet and an attack on free speech and independent journalism.

5.13g On 11 August 2022 Hayward sent a text to Beecher asking “When are you thinking about launching LM”, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, to which he responded “Wednesday” being 17 August 2022.

5.13r On about or shortly before 11 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Beecher, Hayward and Fray resolved to repost the Article on the Crikey website on Monday 15 August 2022.

5.13s As at about, or shortly before 11 August 2022 Crikey’s LACHLAN MURDOCH CAMPAIGN, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, as orchestrated by Private Media, Beecher, Hayward and Fray, evidenced in a multipage PowerPoint presentation, involved:

(a) an “editorial” plan, whereby:

- i. on 15 August 2022, the Article would be reposted;
- ii. on 18 August 2022, 8 stories would be published about the Article, the social media campaign would begin together with a 50%-off sale, which was expressed to coincide with the launch of newspaper advertising, and to take advantage of the American news cycle;
- iii. each day from 22 August until 1 September, editorial newsletters concerning the Lachlan Murdoch Letters Campaign would be sent to all of Crikey’s subscribers (including non-paying subscribers) with marketing material added; and
- iv. free trials would be replaced with sale information, including on paywalls, modules and on social media.

(b) a technical plan, whereby:

- i. Private Media would trial a “direct to check out” approach with all links in emails and paywalls to “minimise clicks”;
- ii. all external promotions, including advertisements and social media, would link to the topic page or specific articles, to ensure that Private Media captured users’ details on free articles and to push the paywall on locked articles, thereby maximising leads and efficiency to payment; and

- iii. Private Media would “take advantage of extra traffic” by trialling a “simple registration wall” which would “pop up” on relevant articles to promote subscriptions to Crikey;

(c) a marketing plan, whereby:

- i. a promotional code of “LETTERS” would be introduced entitling users to 50%-off Crikey subscriptions;
- ii. Private Media would use social media and the newsletters referred to above to promote the LETTERS discount and “gift” subscriptions; and
- iii. Private Media would initially spend \$20,000 on paid media and merchandise to promote the Lachlan Murdoch Campaign, and an additional \$50,000 on full page open letter advertisements in major newspapers across Australia;
- iv. advertising taglines referring to or advertising to Murdoch were developed in a document entitled “Murdoch Mayhem 2022” for the purpose of promoting a half price subscription drive;

(d) a social strategy, whereby:

- i. from 22 August 2022 to 31 August 2022, “organic” promotion on social would be conducted, including by updating posts in real time as much as possible, sharing “sale” posts, and promoting the LETTERS 50% off sale;
- ii. Private Media would engage in “paid” promotion with a budget of \$25,000, in which ads would be bought on social media for \$300 each, and posts would be “boosted” for \$200 each (with the exception of the announcement post on launch day, which would receive a \$1,000 “boost”).

5.13t On 12 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Fray sent an email to Beecher and Hayward which included a number of headlines including one calling Murdoch “Australia’s Biggest Bully” and Beecher responded “What happened to THE LACHLAN MURDOCH LETTERS”.

5.13u Shortly before 12:56pm on Sunday 14 August 2022 Fray spoke to Beecher and Bradley about the Lachlan Murdoch Campaign, the scheme to improperly use the

complaint by Murdoch about the Article for commercial gain, and then spoke to Hayward.

5.13v At about 2pm on 14 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Fray spoke to Samios and “gave her the sick of being intimidated line” which was a pre-prepared false allegation that Fray, Beecher and Hayward had agreed to make about Murdoch as part of the Lachlan Murdoch Campaign.

5.13w On 14 August 2022 Fray sent the Article, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, to Damian Cave from the New York Times in order to promote and publicise it.

5.13x 15 August 2022 was Day 1 of the Lachlan Murdoch Campaign, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, being about 8 weeks after the Article was first published, over 7 weeks after it was taken down and over 10 days after Murdoch’s solicitor last corresponded in the matter.

5.13y On 15 August 2022 Fray, Beecher and Hayward met with Populares to discuss the Lachlan Murdoch Campaign’s, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, next steps.

#### *SMH Article*

5.14. On 14 August 2022 the Sydney Morning Herald newspaper published an article on [www.smh.com.au](http://www.smh.com.au) (**SMH website**) (and other related websites such as [www.theage.com.au](http://www.theage.com.au)) entitled “*Lachlan Murdoch sends legal threat to Crikey over January 6 article*” (**SMH article**).

5.15. It is apparent from the content of the SMH article that on about 13 or 14 August 2022, Private Media, Keane, Beecher, Hayward and/or Fray directly or indirectly through a person acting on their behalf or a person seeking to promulgate the Lachlan Murdoch Campaign, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, for their benefit, their solicitor and contributor to the Crikey website, Michael Bradley, contacted the Sydney Morning Herald newspaper about the publication of the Article, seeking to publicise that Murdoch had complained about its content.

5.16. Private Media, Keane, Beecher, Hayward and/or Fray, either directly and/or indirectly through a person acting on their behalf or a person seeking to promulgate the Lachlan Murdoch campaign, the scheme to improperly use the complaint by

Murdoch about the Article for commercial gain, for their benefit their agent Michael

Bradley informed the journalist who wrote the SMH article that:

- (a) Murdoch had sent a Concerns Notice and multiple legal letters to Crikey since June;
- (b) the Article had been taken down from the Crikey website and various social media platforms;
- (c) lawyers are continuing to negotiate; and
- (d) Murdoch is demanding an apology.

5.17. In providing the information set out in the preceding paragraph that person or persons ~~Private Media, Keane, Fray and/or Bradley~~ *"requested anonymity to speak freely on the matter"*.

5.18. Fray was quoted in the SMH article as saying *"Crikey and its publisher Private Media are sick of being intimidated by Lachlan Murdoch"*.

5.19. Part of the Article was quoted in the SMH article (even though it was not online at the time).

5.20. The SMH article was also published in the hardcopy *Sydney Morning Herald* newspaper and *The Age* on 15 August 2022.

5.21. The SMH website, other related websites, the Sydney Morning Herald and Age newspapers are each published to hundreds of thousands of readers daily.

5.22. The SMH article was promoted, disseminated and discussed on social media by the Sydney Morning Herald, the Age, its journalists and others.

5.23. The SMH article has been referred to, and its contents repeated in other media articles published in and outside of Australia.

5.24. The publication of the SMH article was caused and/or contributed to by Private Media, Keane and/or Fray, either directly and/or through their agent ~~Michael~~ Bradley.

5.25. The publication of the SMH article was promoted on social media by Private Media, Keane, Fray, and ~~Will~~ Hayward.

5.26. The conduct in the preceding particulars in relation to the SMH article ~~including the request for anonymity was part of a scheme to give~~ gave Private Media, Keane, Beecher, Hayward and/or Fray an excuse to:



- (a) promote and republish the Article;
- (b) dishonestly represent the correspondence from Murdoch about the Article; ★
- (c) criticise and cause harm to Murdoch; and
- (d) promote the Crikey website and increase subscribers for financial gain; and
- (e) promulgate the pre-prepared and planned Lachlan Murdoch Campaign, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain.

5.26a On 14 August 2022 Hayward, Beecher and Fray, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, sought to promote the SMH article to other media organisations including the Financial Times (UK), Semafor, and the New York Times.

5.27. As at the date of this pleading, despite the material set out under the heading Reposted Article below, and under the heading Lachlan Murdoch Campaign above, none of Private Media, Keane, Beecher, Hayward or Fray ~~or Michael Bradley~~ have disclosed on any of the many Crikey website articles, newsletters or social media posts referring to Murdoch, that they had already planned to repost the Article on 15 August 2022 and engage in the conduct amounting to the Lachlan Murdoch Campaign, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, and in fact that conduct was not caused by the publication of the SMH article or provided information to be included in it on the basis that their identities be kept anonymous.

5.28. Private Media, Beecher, Hayward, Keane and/or Fray have continued, to the date of this pleading, to use the SMH article and their (false) allegations about Murdoch intimidating them, to promote the Article, and the Crikey website, to justify the reposting of the Article, to promote the Reposted Article (defined below) in order to increase its number of subscribers for financial gain.

### **Reposted Article**

5B. On or about 15 August 2022 and continuing thereafter, Private Media, Keane, Fray, Beecher and Hayward published in the Australian Capital Territory and in each of the States and the Northern Territory of Australia, an article on the Crikey website titled “*Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator*” (Reposted Article):



- 5.29. On 15 August 2022 Private Media, Keane and/or Fray reposted the The Reposted Article was uploaded to the Crikey website (**Reposted Article**) where it remains to be viewed and downloaded, and in its content was the same as the Article, together with the words:

*“This article was first published on June 29 but taken down the next day after a legal threat from Lachlan Murdoch. We have decided to republish the article now, in order to clarify recent media reports about that legal threat.”*

A copy of the Reposted Article is set out in **Schedule B**.

- 5.30. The words “recent media reports” in the Reposted Article operated as a link to the SMH article.

5.30a The words in sub-paragraph 5.29 included in the Reposted Article were false to the knowledge of each of Fray, Beecher and Hayward, because they had planned reposting of the Article on 15 August 2022 from at least 11 August 2022 as part of the Lachlan Murdoch Campaign, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain.

5.30b At about 2:37pm on 15 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Fray sent a false text message to Zoe Samios who wrote the SMH article as follows:

*“Inspired by you we have repubed the original Murdoch story”*

5.30c Each of Beecher and Hayward conducted and participated in the publication of the Reposted Article by their conduct pleaded in paragraph 5A, above and their conduct on 22 and 23 August below in approving, publicising and promoting the Reposted Article.

5.30d On a date unknown to Murdoch, but on or before 23 August 2022, Private Media altered the additional words referred to in 5.29 above to read:

*“This article was first published on June 29 but taken down the next day after a legal threat from Lachlan Murdoch. We have chosen to republish it as part of a series about this legal threat and about how media power works in Australia. For the series introduction go here, and for the full series go here.”*

- 5.31. The Reposted Article was tagged as “Unlocked”, meaning that it was accessible to and able to be downloaded and read by any viewer of the Crikey website, for free, whether or not they had a subscription to the Crikey website.

- 5.32. The Reposted Article was promoted as FREE TO READ or with the words *"it's out from behind the paywall"* falsely implying that the Article had been behind the paywall when it was not.
- 5.33. The Reposted Article appeared on the Home page of the Crikey website at the top of the page.
- 5.34. The Reposted Article appeared with the comments that had been posted about the Article on 29 and 30 June, referred to above.
- 5.35. The Reposted Article/Article has attracted further comments on the Crikey website, as at the date of this pleading, the total number of comments is 406 115 comments, but that number increases by the ongoing publication of the Reposted Article.
- 5.36. Private Media promoted the Article and Reposted Article and caused the Reposted Article to be republished on its social media accounts including as follows:
- (a) On or about 15 August 2022, Private Media published a tweet at about 11:37am on the Crikey Twitter account, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
    - i. was a "*pinned tweet*" at the top of the Crikey Twitter account until about 6pm on 22 August 2022;
    - ii. attracted 79 comments, 787 retweets and 1,664 likes;
    - iii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
  - (b) On or about 15 August 2022, Private Media published a post on the Crikey Facebook account at about 11:41am, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
    - i. attracted 54 comments, 71 shares and 418 reactions;
    - ii. continues to be available for publication on the Crikey Facebook account and the subject of comment, share and reaction.
  - (c) On or about 15 August 2022, Private Media, ~~through its CEO Will~~ and Hayward, published a post at about 11:30am on his LinkedIn account, which contained a link to the SMH article, promoted the Reposted Article and used it as a basis to seek subscribers to its "*brave independent*

*journalism*" and as at the date of ~~this pleading~~ the commencement of these proceedings:

- i. attracted 41 comments, 6 shares and 214 likes;
  - ii. continues to be available for publication and the subject of comment, share and reaction.
- (d) On or about 15 August 2022, Private Media published a second tweet on the Crikey Twitter account at about 12:53pm, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted 1 comment, 39 retweets and 104 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (e) On or about 15 August 2022, Private Media published a third tweet on the Crikey Twitter account at about 6:45pm, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted 9 comments, 76 retweets and 134 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (f) On or about 15 August 2022, Private Media published a second post on the Crikey Facebook account at about 6:45pm, which promoted the Reposted Article to "*clarify recent media reports*" and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted 17 comments, 61 shares and 148 reactions;
  - ii. continues to be available for publication on the Crikey Facebook account and the subject of comment, share and reaction.
- (g) On or about 15 August 2022, Private Media published a post on the Crikey Instagram account at about 6:45pm, which referred to the Reposted Article and directed readers to a link to the Crikey website at the top of the Instagram page and as at the date of ~~this pleading~~ the commencement of these proceedings:

- i. attracted 51 comments, 918 likes;
  - ii. continues to be available for publication on the Crikey Instagram account and the subject of comment, likes and shares.
- (h) On or about 15 August 2022, Private Media, shared at about 7pm, ~~Will~~ Hayward's LinkedIn post, on the Private Media LinkedIn account, which claimed that the conduct of Crikey was "*independent journalism in a world that really needs it*" and as at the date of this pleading continues to be available for publication and the subject of comment, share and reaction.
- (i) On or about 16 August 2022 Private Media published a Tweet on the Crikey Twitter account at about 10:30am, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
  - i. attracted 3 comments, 43 retweets and 99 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (j) On or about 17 August 2022, Private Media at about 9:53am retweeted a tweet by Kevin Rudd on the Crikey Twitter account, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
  - i. attracted 16 shares and 28 likes;
  - ii. continues to be available for publication on the Crikey Twitter account and the subject of comment, likes and shares.
- (k) On or about 17 August 2022, Private Media at 9:51am replied to a tweet by Kevin Rudd on the Crikey Twitter account, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
  - i. attracted 3 comments, 32 retweets and 77 likes;
  - ii. continues to be available for publication on the Crikey Twitter account and the subject of comment, likes and shares.
- (l) On or about 18 August 2022, Private Media published a tweet on the Crikey Twitter account at 8:32am, which contained a link to the Reposted Article

and an extract from Murdoch's Wikipedia page which referred to the Article and as at the date of ~~this pleading~~ the commencement of these proceedings:

- i. attracted 16 retweets and 4 likes;
  - ii. continues to be available for publication on the Crikey Twitter account and the subject of comment, likes and shares.
- 5.37. On or about 15 August 2022, Private Media and Fray promoted the Reposted Article to its thousands of subscribers in its newsletter which was distributed by email.
- 5.38. Keane promoted the Article and Reposted Article and caused the Reposted Article to be republished on ~~its~~ his social media accounts:
- (a) On or about 15 August 2022, retweeted the Crikey Twitter account tweet to his 105,000 followers on the Keane Twitter account at about 11:45am, which contained a link to the Reposted Article and as at the date of this pleading continues to be available for publication on the Keane Twitter account and the subject of comment, share and reaction.
  - (b) On or about 16 August 2022, Keane retweeted a Crikey Twitter account tweet to his 105,000 followers on the Keane Twitter account at about 11am, which contained a link to the Reposted Article and as at the date of this pleading continues to be available for publication on the Keane Twitter account and the subject of comment, share and reaction.
- 5.39. The Article, Reposted Article and the social media posts referred to above have been widely promoted, commented on, retweeted/shared and reacted to on Twitter, Facebook, LinkedIn and Instagram, including by persons who have large numbers of followers, thus causing a substantial grapevine effect in relation to the content of the Article and the allegations in it about Murdoch.
- 5.40. The Article, Reposted Article and/or SMH article have been republished and/or referred to in other mass media publications in Australia and elsewhere, which publications have resulted in further social media posts and other commentary about the content of the Article and Murdoch.
- 5.40a From about 16 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Fray, Beecher and Hayward attempted to place an advertisement in the Australian media about

Murdoch, including in newspapers owned by companies associated with Murdoch, so that they could publicise that their advertisement about Murdoch was rejected by those companies and turn that into a talking point to market Crikey.

5.40b By 17 August 2022 social media posts by Private Media about the Article and Reposted Article had attracted a reach of 1.3M on Twitter.

5.41. The Article/Reposted Article has, since 18 August 2022, been referred to and included by hyperlink in the Wikipedia page about Murdoch, a page viewed by an average of 1210 persons per day.

5.41a On 21 and 22 August 2022, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, Fray distributed to a number of journalists and media organisations in Australia and overseas, an email attaching the correspondence between the parties, the NY Times ad, and the Bradley advice.

#### *22 August conduct*

5.42. At about 4pm (AEST) on 22 August 2022 an advertisement written and paid for by Private Media and Fray and Beecher was published on page 7 in the print edition of the New York Times (**NY Times ad**).

5.43. The NY Times ad referred to the Article, the Reposted Article and Murdoch and invited Murdoch to commence these proceedings.

5.44. The NY Times ad contained a QR code which linked readers to the homepage of the Crikey website.

5.44a. The NY Times ad cost about \$50,000 USD.

5.45. At about 4pm on 22 August 2022 the homepage of the Crikey website was dominated by articles about Murdoch and the Article and Reposted Article, in furtherance of the scheme to improperly use the complaint by Murdoch about the Article for commercial gain, including:

- (a) the Reposted Article, available FREE TO READ and has attracted further comments;
- (b) an article written by Keane entitled “*Why I’d write an even stronger story today about Murdoch, Fox and Trump*”, which contained a link to the Reposted Article, available FREE TO READ and has attracted 24 comments;

- (c) an article by Fray and ~~Eric~~ Beecher "*The power of one: how Lachlan Murdoch turned nuclear over a legitimate piece of journalism*" which contained a link to the Reposted Article and has attracted 18 comments;
  - (d) an article by Fray and ~~Eric~~ Beecher "*An open letter to Lachlan Murdoch: Chairman of News Corporation and Executive Chair of Fox Corporation*" which contained a link to the Reposted Article, available FREE TO READ and has attracted 18 comments;
  - (e) an article by ~~Eric~~ Beecher "*Standing up for the free press: here's what abuse of media power looks like in Australia*" which contained a link to the Reposted Article, available FREE TO READ and has attracted 39 comments;
  - (f) a headline "*The Lachlan Murdoch Letters*" and linked to each of the letters referred to below under the heading Concerns Notice;
  - (g) an article "*The Lachlan Murdoch letters in full: Fox CEO demands Crikey apologise*" which contained a link to the Reposted Article, available FREE TO READ and attracted comments.
- 5.46. Each article posted on 22 August 2022 contained an advertisement to subscribe to the Crikey website for a discounted rate.
- 5.47. Prior to engaging in the conduct referred to in the preceding paragraphs, on 22 August 2022, Private Media engaged in a media campaign, by contacting major media organisations around Australia and overseas to promote and publicise the Article and the Reposted Article, the NY Times ad, the publication of the correspondence between the parties and the articles on the Crikey website about Murdoch.
- 5.48. Private Media engaged in the conduct in the preceding paragraphs without any prior notice to Murdoch or his lawyers.
- 5.49. Media organisations in Australia and elsewhere published articles on about 22 August 2022 referring to the Article and Reposted Article, the NY Times ad, the publication on the Crikey website of further articles about Murdoch and the correspondence between the parties.
- 5.50. Private Media promoted the Article and Reposted Article and caused the Reposted Article to be republished on its social media accounts including as follows:
- (a) On or about 22 August 2022, Private Media published a tweet at about 5:09pm on the Crikey Twitter account, which contained a link to the Crikey



website linking the article referred to in 5.45(f), above and as at the date of ~~this pleading~~ the commencement of these proceedings:

- i. attracted 58 comments, 749 retweets and 2,380 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (b) On or about 22 August 2022, Private Media published a tweet at about 5:09pm on the Crikey Twitter account, which referred to Murdoch and contained a link to the Crikey website subscription page and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted comments, 104 retweets and 427 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (c) On or about 22 August 2022, Private Media published a tweet at about 5:22pm on the Crikey Twitter account, which contained a link to the Crikey website linking the article referred to in 5.45(d), above and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted comments, 104 retweets and 377 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (d) On or about 22 August 2022, Private Media published a tweet at about 5:29pm on the Crikey Twitter account, which contained a link to the Reposted Article and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted comments, 196 retweets and 598 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (e) On or about 22 August 2022, Private Media published a tweet at about 5:48pm on the Crikey Twitter account, which contained a link to the Crikey website linking the article referred to in 5.45(c), above and as at the date of ~~this pleading~~ the commencement of these proceedings:
- i. attracted comments, 29 retweets and 113 likes;



- ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (f) On or about 22 August 2022, Private Media published a tweet at about 5:57pm on the Crikey Twitter account, which contained a link to the Crikey website linking the article referred to in 5.45(b), above and as at the date of this pleading the commencement of these proceedings:
- iii. attracted 30 comments, 285 retweets and 651 likes;
  - iv. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (g) On or about 22 August 2022, Private Media published a tweet at about 6:00pm on the Crikey Twitter account, which contained a link to the Crikey website linking the article referred to in 5.45(e), above and as at the date of this pleading the commencement of these proceedings:
- i. is a "*pinned tweet*" at the top of the Crikey Twitter account;
  - ii. attracted 194 comments, 1,446 retweets and 4,145 likes;
  - iii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (h) On or about 22 August 2022, Private Media published a tweet at about 6:15pm on the Crikey Twitter account, which contained a link to the Crikey website linking the article referred to in 5.45(g), above and as at the date of this pleading the commencement of these proceedings:
- i. attracted comments, 16 retweets and 38 likes;
  - ii. continues to be made available for publication on the Crikey Twitter account and the subject of comment, retweet and reaction.
- (i) On or about 22 August 2022, Private Media continued to tweet and retweet into the night, the articles referred to in 5.45, above and to retweet articles referring to its conduct in relation to Murdoch, the Article, Reposted Article and the NY Times ad, all of which have been widely retweeted, commented upon and reacted to.
- (j) On about 22 August 2022, Private Media published a series of Facebook posts on the Crikey Facebook page which linked the articles referred to

above including the Reposted Article which have been widely shared, commented upon and reacted to.

- (k) On about 22 August 2022, Private Media published a series of Instagram posts on the Crikey Instagram page which referred to the Article and Reposted Article and directed readers to a link to the Crikey website at the top of the Instagram page, which posts have been widely liked and commented upon.
  - (l) Private Media paid for the Facebook and Instagram posts referred to above to be “promoted”, causing them to be disseminated widely.
- 5.51. Private Media, Will Hayward, and Keane also posted and shared on social media links to the articles it caused to be published by other media organisations as referred to above, about the Article, Reposted Article, Murdoch, the NY Times ad and the articles posted on the Crikey website on 22 August 2022, which had the effect of promoting and further disseminating the Article and the Reposted Article.
- 5.52. The social media posts referred to in the preceding paragraphs disseminated the Article and the Reposted Article and were shared and commented upon widely, and included tagging by Private Media of Twitter accounts that had large numbers of followers.
- 5.53. The social media posts referred to above caused Murdoch to trend on Twitter by about 8pm on 22 August 2022.
- 5.54. On 22 August 2022 Private Media promoted the Article, Reposted Article, the NY Times ad and the other articles on the Crikey website about Murdoch by its newsletter emailed to thousands of sscribers.
- 5.54a On 22 August 2022 Beecher promoted the Article and the Reposted Article on ABC radio during an interview with Virginia Trioli.
- 5.55. The content of the NY Times ad was republished and repeated on 23 August 2022 in *The Canberra Times* (**Canberra Times ad**).
- 5.56. On 23 August 2022 Private Media and Hayward published further material about Murdoch and the Article and the Reposted Article on the Crikey website ~~including an article by CEO Will Hayward.~~
- 5.57. On 23 August 2022 Private Media, Keane and Fray publicised the material on the Crikey website about Murdoch, the Article, Reposted Article the NY Times ad and the Canberra Times ad in its newsletters emailed to thousands of subscribers and

repeatedly on social media, causing further promotion of the Article, and Reposted Article and dissemination of it.

5.57a On or shortly before 23 August 2022 Hayward gave an interview to the AFR in which he publicised the material on the Crikey website about Murdoch, the Article, the Reposted Article and the NY Times ad.

5.58. On 23 August 2022 Keane conducted a webinar broadcast over social media in which he publicised the content of the Article, Reposted Article and the conduct of Private Media on 22 August as set out above. The webinar concluded with an invitation to gift Crikey subscriptions.

5.59. The conduct in the preceding particulars in relation to the NY Times ad, Canberra Times ad and the publications and social media posts on 22 and 23 August 2022 by Private Media, Keane, Beecher, Hayward and Fray was a continuation of a disingenuous-campaign to:

(a) promote and republish the Article;

(ai) promote and publish the Reposted Article;

(b) misrepresent the correspondence from Murdoch about the Article;

(c) cause harm to Murdoch; ~~and~~

(d) promote the Crikey website and increase subscribers for financial gain; and

(e) conduct and carry out the pre-planned Lachlan Murdoch Campaign, the scheme to improperly use the complaint by Murdoch about the Article for commercial gain.

5.60. In the premises of the facts pleaded above, it is to be inferred many hundreds of thousands of persons in each State and Territory of Australia have downloaded and read, commented, shared and reacted to the Reposted Article, and/or the republication of it on social media and on the Crikey website ~~as the Reposted Article~~ and will continue to download read, comment, share and react to the Article ~~in the form of the Reposted Article~~, unless it is deleted from the Crikey website and any other platform.

5.60a On 24 August 2022 Hayward posted on Twitter about these proceedings in order to generate subscriptions, and his tweet "*was a huge source of subs*" which he planned to repeat and organise for Keane to retweet.

5.60b On 24 August 2022 Hayward sought to be verified on Twitter so that he would be more effective as part of the “campaigning team”.

5.60c On 25 August 2022 Beecher gave interviews to New Daily and Mumbrella about the Reposted Article.

~~5.61. Murdoch relies on the republications, including the Reposted Article as to damages only and not as a separate cause of action.~~

5.62. Murdoch also relies on the grapevine effect of the publication of the Article, including and the Reposted Article by reason of the substantial promotion of it on social media and by reason of the SMH article.

5.63. Further particulars of the extent of publication and republication of the Article and the Reposted Article will be provided after admissions in accordance with the Defamation Practice Note.

6. Each of the Article and the Reposted Article was of and concerning Murdoch who was reasonably identified and identifiable to readers of the Article, or some of them, by reason of the following matters:

6.1 the Article referred to “*Murdoch*” in the headline and “*Murdochs*” in the body of the Article;

6.2 the Article referred to the “*Murdochs and their slew of poisonous Fox News commentators*”;

6.3 the social media posts referred to in paragraph 5.10 above each referred to “*Murdoch*”;

6.4 Murdoch is well known throughout Australia and elsewhere as a director of companies and a business person;

6.5 Murdoch was appointed CEO and Executive Chairman of Fox Corporation on 19 March 2019;

6.6 Murdoch was the CEO and Executive Chairman of Fox Corporation on 6 January 2021;

6.7 Murdoch was the CEO and Executive Chairman of Fox Corporation at the date of publication of the Article;

6.8 the SMH article identified Murdoch as the subject of the Article;

- 6.9 the Reposted Article named "*Lachlan Murdoch*" in it;
- 6.10 the NY Times ad identified Murdoch as the subject of the Article as ~~did its~~ subsequent substantial republication on the Crikey website, social media and in the Canberra Times;
- 6.11 the articles published on the Crikey website on 22 and 23 August 2022 each identified Murdoch as the subject of the Article as did the subsequent substantial mass media and social media posts about each of those articles;
- 6.12 in the article published on the Crikey website on 22 August 2022 written by Keane, each of Private Media and Keane admit that in the Article they called Murdoch Trump's unindicted co-conspirator in relation to the events of January 6;
- 6.13 the newsletters and social media posts promoting the Reposted Article referred to in paragraph 5 above each referred to "*Lachlan Murdoch*";
- 6.14 readers of the Article identified Murdoch as the subject of the Article by reason of one or more of the matters in 6.1-6.7, above;
- 6.15 readers of the Article subsequently identified Murdoch as the subject of the Article by reason of one or more of the matters in 6.8-6.13, above.
7. In its natural and ordinary meaning, each of the Article and the Reposted Article was defamatory of Murdoch and carried the following defamatory imputations, or imputations not different in substance:
- 7.1. Murdoch illegally conspired with Donald Trump to overturn the 2020 presidential election result;
- 7.2. Murdoch illegally conspired with Donald Trump to incite an armed mob to march on the Capitol to physically prevent confirmation of the outcome of the 2020 presidential election;
- 7.3. Murdoch illegally conspired with Donald Trump to incite a mob with murderous intent to march on the Capitol;
- 7.4. Murdoch illegally conspired with Donald Trump to break the laws of the United States of America in relation to the 2020 presidential election result;
- 7.5. Murdoch knowingly entered into a criminal conspiracy with Donald Trump to overturn the 2020 presidential election result;



- 7.6. Murdoch knowingly entered into a criminal conspiracy with Donald Trump and a large number of Fox News commentators to overturn the 2020 election result;
- 7.7. Murdoch engaged in treachery and violent intent together with Donald Trump to overturn the 2020 presidential election result;
- 7.8. Murdoch was aware of how heavily armed many of the attendees of the planned rally and march on the Capitol building were on January 6 before it occurred;
- 7.9. Murdoch was a co-conspirator in a plot with Donald Trump to overturn the 2020 election result which costs people their lives;
- 7.10. Murdoch has conspired with Donald Trump to commit the offence of treason against the United States of America to overturn the 2020 election outcome;
- 7.11. Murdoch has conspired with Donald Trump to commit the offence of being a traitor to the United States of America to overturn the 2020 election outcome;
- 7.12. Murdoch should be indicted with conspiracy to commit the offence of being a traitor to the United States of America to overturn the 2020 election outcome;
- 7.13. Murdoch should be indicted with the offence of being a traitor to the United States of America to overturn the 2020 election outcome;
- 7.14. Murdoch conspired with Donald Trump to lead an armed mob on Congress to overturn the 2020 election outcome,

(collectively, the **Imputations**).

### **Serious Harm**

8. Each of the Article and Reposted Article caused, or is likely to cause serious harm to Murdoch's reputation by reason of the following facts and matters:
  - 8.1 The extent of publication of the Article, republications of it including the Reposted Article and the grapevine effect as set out in paragraphs 5 and 5B, above.
  - 8.1a The extent of publication of the Reposted Article, republications of it and the grapevine effect as set out in paragraph 5B, above.
  - 8.2 The seriousness of the imputations carried by the Article and the Reposted Article.
  - 8.3 That Murdoch is a well-known Australian and business person.
  - 8.4 The allegations of criminality in the Article and Reposted Article.



- 8.5 The sensational language used in the Article and Reposted Article.
- 8.6 The comparison of Murdoch's alleged conduct in the Article and Reposted Article to President Richard Nixon, who is widely believed to have been a criminal conspirator in the Watergate scandal.
- 8.7 The purported reliance on evidence presented in a House Select Committee to give weight and credence to the allegations in the Article and Reposted Article.
- 8.8 The substantial promotion of the Article and Reposted Article on the Crikey website, through its newsletter and on social media as pleaded in paragraphs 5 and 5B, above.
- 8.9 That the Article and Reposted Article was available FREE TO READ and not limited to subscribers.
- 8.10 The many comments on the Article and Reposted Article and the social media posted referred to in paragraphs 5 and 5B, above, which evidence the harm to Murdoch's reputation.
- 8.11 The promotion of the Article and its content in the SMH article and the confirmation that the Article concerned Murdoch.
- 8.12 The publication of the Reposted Article on the Crikey website, which is still available for publication and continues to be published and cause harm to Murdoch's reputation.
- 8.13 The inclusion of Murdoch's given name in the Reposted Article.
- 8.14 The Google search results for Murdoch on 18 August 2022 included articles that refer to the Article/Reposted Article and the SMH article.
- 8.15 The promotion of the Article and Reposted Article in the SMH article, NY Times ad, Canberra Times ad, the Crikey website, newsletter and social media referred to in paragraphs 5 and 5B, above.
- 8.16 The promotion of the Article and Reposted Article, including statements by Private Media, Keane, Beecher, Hayward and/or Fray to the effect that its content is justifiable and that Murdoch's complaints about its content are spurious, giving credence to its content.

- 8.17 The substantial promotion of the Article and Reposted Article on 22 August 2022, as pleaded in paragraphs 5 and 5B, above, which caused Murdoch to trend on Twitter by about 8pm on 22 August 2022.
- 8.18 A Google search of Murdoch's name on 22 August 2022 resulted in links to the Crikey website and the articles about Murdoch referred to in paragraph 5B, above.
- 8.19 The substantial promotion of the Article and Reposted Article on 23 August 2022, as pleaded in paragraph 5B, above, which caused Murdoch to trend on Twitter by about midday on 23 August 2022.
- 8.20 The conduct of Private Media, Keane and/or Fray in refusing to retract and apologise for the allegations about Murdoch in the Article.
- 8.21 The many comments on the Reposted Article and the social media posts referred to in paragraphs 5 and 5B, above, which evidence the harm to Murdoch's reputation.
- 8.22 The many adverse comments about Murdoch on social media referring to or arising from the Article and/or the Reposted Article.
- 8.23 The Article and the Reposted Article have been promoted and discussed in many other media publications since 15 August 2022 in Australia and elsewhere.
- 8.24 The Article/Reposted Article is, as of 18 August 2022 referred to and hyperlinked in Murdoch's Wikipedia entry, which is and will be widely read by persons (an average of 1210 persons daily) who have an interest in Murdoch.
- 8.25 On about 18 August 2022, Private Media posted a Tweet referring to the Article/Reposted Article being included in Murdoch's Wikipedia entry.
- 8.26 Since about 16 August 2022, Private Media and its servants or agents, have promoted the Article and Reposted via social media and newsletter, in order to seek subscribers for the Crikey website, including by offering discounts on the subscription fee as part of those promotions.
- 8.27 The publication of the Concerns Notice on the Crikey website alleged in paragraph 5B, above which set out the Imputations about Murdoch.
- 8.28 The hateful comments by members of the public that have followed social media posts promoting the Article and the Reposted Article by Private Media, Keane, Fray, Hayward and Bradley.



- 8.29 The offensive stickers and other merchandise about Murdoch advertised for sale by The Shot, including a sticker and other merchandise alleging that LACHLAN MURDOCH IS AN UNINDICTED CO-CONSPIRATOR, the profits from which are being donated in support of Crikey's "legal defence fund".
- 8.30 The fact that over 5,800 people donated to the legal defence fund against Murdoch in relation to these proceedings.
- 8.31 The comments on the Article/Reposted Article have increased to 115, and the comments on all of the other material on the Crikey website promoting the Article and the Reposted Article and attacking Murdoch in relation to it.
- 8.32 The likely adverse impact on his reputation amongst the general public who will likely believe by reason of the Article and/or the Reposted Article that Murdoch participated in illegal or criminal conduct in relation to the 2020 presidential election.
- 8.33 The adverse impact on Murdoch's reputation amongst the general public who believed by reason of the Article and/or Reposted Article that he participated in illegal or criminal conduct in relation to the 2020 presidential election.
- 8.34 The likely adverse impact on Murdoch's reputation amongst employees of companies with which he is associated who likely will find it less attractive to work for those companies due to the allegations made against him in the Article and the Reposted Article.
- 8.35 The adverse impact on Murdoch's reputation amongst employees of companies with which he is associated who have found it less attractive to work for those companies or expressed concerns due to the allegations made against him in the Article and the Reposted Article.
- 8.36 The readership of the Article and Reposted Article, which is ongoing given they are still published and promoted and have reached over 63,000 readers.
- 8.37 The ongoing promotion and dissemination of the Article and Reposted Article to tens of thousands of readers, especially via social media.
- 8.38 The immediate (and erroneous) belief by readers of the Article and Reposted Article that Murdoch was named in the evidence before the Senate House Committee investigating January 6.

- 8.39 The ongoing harm caused to Murdoch's reputation because each of Private Media, Keane, Fray, Beecher and Hayward promote the Article and Reposted Article as a piece of "public interest journalism", thus lending it credit and weight.
- 8.40 The ongoing failure on the part of each of Private Media, Keane, Fray, Beecher and Hayward to publicly state that the allegation of criminal co-conspirator about Murdoch is not true.
- 8.41 The ongoing claim by each of Private Media, Keane, Fray, Beecher and Hayward that Murdoch complaining about the Article and seeking an apology was an illegitimate act of intimidation.
- 8.42 The exponential increase in Twitter comments about Murdoch on 15, 22 and 23 August 2022, at the time that Private Media, Beecher, Hayward and Fray were conducting and carrying out the Lachlan Murdoch Campaign, described in paragraph 5A above, which involved the promotion of the Article and the Reposted Article.
- 8.43 The publicity of these proceedings, including pleadings and evidence and statements made by or on behalf of Private Media, Fray, Beecher, Hayward and/or Keane about Murdoch's commencement and conduct of the proceedings and statements by them purporting to state what the proceedings are about.
- 8.44 Further particulars of serious harm will be provided as and when they become available.

### **Concerns Notices**

9. On 30 June 2022, being more than 28 days before the date of this pleading, Murdoch, through his lawyers, gave a concerns notice to each of Private Media, Keane and Fray in accordance with the *Defamation Act* 2005 (NSW) (**Act**) and its counterparts in the other States and Territories in relation to the Article (**Concerns Notice**).
10. The Article was removed from the Crikey website within about 20 minutes of transmission of the Concerns Notice.
11. On 7 July 2022, Private Media, Keane and Fray through their (then) lawyers Minter Ellison, purported to issue a Further Particulars Notice under s12A of the Act.
12. On 19 July 2022 Murdoch through his lawyers responded to the letter referred to in the preceding paragraph, being less than 14 days after that letter was given and gave further particulars of serious harm.

13. On 27 July 2022 Private Media, Kean and Fray through their current lawyers Murdoch Lawyers purported to make an offer to make amends under the Act but which did not offer any apology and quoted from the Article and otherwise repeated the allegations in it. They also made the following admissions in relation to the Imputations (specifically notating the letter as not without prejudice):

*“There is no evidence that Mr. Murdoch did any of the things described above. Crikey does not say that he did any of them.*

*Crikey does believe that Mr Murdoch bears some responsibility for the events of January 6 because of the actions of Fox News, the network he leads. However, Crikey does not believe that he was actively involved in the events of that day as the things described above would suggest.”*

13A. The 27 July “offer” was open for 28 days until 24 August 2022 as required by the Act and it was never withdrawn.

14. On 29 July 2022 Murdoch, through his lawyers, responded to the letter referred to in the preceding paragraph re-iterating his request for an apology.
15. On 2 August 2022 Private Media, Kean and Fray, through Marque Lawyers responded to the letter referred to in the preceding paragraph in which they made offensive and baseless allegations and refused to apologise.
16. On 4 August 2022 Murdoch, through his lawyers, disputed the content of the letter referred to in the preceding paragraph, and re-iterated his wish that the dispute be settled with the provision of an apology.
17. On 9 August 2022 Private Media, Keane and Fray, through their lawyers, indicated that they “stood by” the Article (despite having removed it from the Crikey website and all social media).
18. Murdoch took no further steps to engage with any of Private Media, Keane or Fray in relation to the Article after 4 August 2022 until the date of this pleading.

18A. By reason of the matters pleaded in paragraphs 5, 5A and 5B above, each of Private Media (through its guiding minds Beecher and Hayward) Fray and Keane engaged in the correspondence referred to in paragraphs 13, 15 and 17, in bad faith and for the purpose of insulting Murdoch and not for any legitimate purpose under the Act. Those letters were for the purpose of the LACHLAN MURDOCH CAMPAIGN, as evidence by the matters set out in paragraph 5A, above.



18B. On 6 December 2022 Murdoch, through his lawyers, gave a concerns notice to each of Private Media, Keane, Fray, Beecher and Hayward in accordance with the Act in relation to the Reposted Article (**Further Concerns Notice**).

18C. On 7 December 2022 Private Media, Fray, Beecher, Hayward and Keane, through their lawyers, purported to issue a Further Particulars Notice under s12A of the Act.

18D. On 8 December 2022 Murdoch through his lawyers responded to the letter referred to in the preceding paragraph, being less than 14 days after that letter was given, noting its invalidity as a Further Particulars Notice under s12A of the Act, but in any event giving further particulars of serious harm.

## Damages

19. By reason of the publication and republication of the Article by Private Media, Keane and/or Fray, and the publication and republication of the Reposted Article by Private Media, Keane, Fray, Beecher and/or Hayward, Murdoch has been gravely injured in his character, his personal reputation, and his professional reputation as a business person and company director, and has suffered and will continue to suffer substantial hurt, distress and embarrassment.

20. Murdoch's hurt and harm caused by the publication of the Article and the Reposted Article has been aggravated by his knowledge of the following conduct of Private Media, Keane and Fray and Beecher and Hayward including:

20.1. Their failure to contact Murdoch prior to the publication of the Article and the Reposted Article to notify him of the allegations they intended to publish about him and offer him the opportunity to respond to those allegations.

20.2. The baselessness of the allegations about Murdoch in the Article and Reposted Article.

20.3. Publishing and continuing to publish the Article and the Reposted Article despite their belief that none of the Imputations are or were true at the time of publication or at any time since that date.

20.4. Publishing and continuing to publish the Article and the Reposted Article despite their belief that Murdoch had no direct involvement in the January 6 attack on the Capitol.

20.5. Purporting to report on the House Select Committee evidence (as advertised in their newsletter) but instead using the Article and the Reposted Article as an opportunity to improperly malign Murdoch.

- 20.5a Purporting to repost on House Select Committee evidence that none of them had in fact read or watched at the time of publication of the Article.
- 20.6. Publishing and continuing to publish the Article and the Reposted Article despite their knowledge that Murdoch was not even referred to in the evidence that the Article and the Reposted Article was purporting to report on.
- 20.7. The gratuitous references to Murdoch in the Article and Reposted Article and the newsletters and social media posts promoting the Article and Reposted Article.
- 20.8. The improper use of Murdoch's name in the Article and Reposted Article and the promotion of it in order to attract readers to the Article and Reposted Article and to the Crikey website generally.
- 20.9. The offensive and extravagant language used in the Article and Reposted Article about Murdoch including by comparing his alleged criminality to Richard Nixon's conduct.
- 20.10. Instructing their lawyers to send offensive correspondence as set out in paragraphs 13, 15 and 17 above including by offering the publication of a statement that quoted the defamatory parts of the Article and repeated the Imputations.
- 20.11. Seeking to use the mandatory Concerns Notice correspondence for their own self-promotion, instead of for the purpose of resolving the dispute consistently with the objects of the Act.
- 20.12. Their failure to apologise, having removed the Article from the Crikey website, which would have resolved the dispute.
- 20.13. Their disingenuous scheme, contrived on about or shortly before 25 July 2022, to improperly use the Offer to Make Amends provisions of the Act to conduct a campaign of self-promotion as pleaded in paragraphs 5, 5A and 5B above, with the intention of harming Murdoch.
- 20.14. Causing and/or contributing to the publication of the SMH article (whether directly or indirectly), ~~doing so "secretly"~~, making misleading statements for the purpose of publication in that article, including by falsely claiming that Murdoch was seeking to "intimidate" them as set out in paragraph 5A, above.
- 20.15. Repeating the claim that Murdoch was seeking to "intimidate" them on the Crikey website, in the newsletter and on social media in order to harm Murdoch and to promote the Crikey website.

- 20.16. Falsely suggesting that Murdoch was being unreasonable in his conduct towards them to settle the dispute, in circumstances where he repeatedly told them that an apology was the only further step that needed to occur for the matter to resolve.
- 20.17. ~~Causing the SMH article to be published and then~~ Using it the SMH article as a pretext to publish the Reposted Article to “clarify” the SMH reporting whilst not disclosing ~~their involvement in the SMH article which they claimed to be seeking to “clarify”~~. the pre-existing plan by Private Media, Beecher, Hayward and Fray as part of the Lachlan Murdoch Campaign pleaded in paragraph 5A, above, to repost the Article on 15 August 2022 before they knew about the SMH article.
- 20.18. ~~Causing the SMH article to be published as part of a scheme to promote the Crikey website and increase its subscriptions. Falsely claiming in the Reposted Article that it was uploaded on 15 August 2022 to “clarify” the content of the SMH article.~~
- 20.19. Publishing the Reposted Article for their own self-promotion and in order to harm Murdoch.
- 20.20. Publishing the Reposted Article despite knowing the allegations in it about Murdoch were false and baseless.
- 20.21. Relentlessly promoting the Article and Reposted Article on social media, on the Crikey website, in newsletters and in the SMH article.
- 20.22. Wrongly promoting the Article and Reposted Article in their social media and in newsletters as an example of “*brave*” or “*fearless*” journalism in order to advertise subscriptions to the Crikey website, including by having a discounted subscription rate especially tied to that promotion.
- 20.23. Wrongly promoting the Crikey website in connection with the Article and Reposted Article as “*independent media*” which believes in “*truth above consequences*” when such statements were false.
- 20.24. Seeking to harm Murdoch by claiming that the Article amounted to important “journalism” protected by freedom of the press when, given the matters set out in the preceding sub-paragraphs, it plainly was not.
- 20.25. Seeking to harm Murdoch by attempting to place a paid advertisement in various Australian newspapers from about 17 August 2022, being also attempts to harass and place undue pressure on Murdoch in relation to these proceedings.
- 20.26. Seeking to humiliate and harm Murdoch by placing a paid advertisement on 22 August 2022 in the New York Times, the NY Times ad, being also:

- (a) self-promotion on the part of Private Media and Fray continuing their campaign to publicise the Crikey website and increase subscriptions;
- (b) disingenuous by the suggestions that the Article was “*public interest journalism*” having regard to the respondents’ admissions that the Imputations are false to their knowledge;
- (c) disingenuous in its publication in the United States, which is evidently irrelevant to the defamation claim in these proceedings;
- (d) an attempt to harass and place undue pressure on Murdoch in relation to these proceedings.

20.27. Publishing the content of the Concerns Notice to hurt and harm Murdoch.

20.27a Drafting letters purporting to be part of the negotiation of a legal dispute under the Act whilst in fact intending to publish their content and not participate in a good faith negotiation.

20.28. Engaging in the conduct under the heading “*22 August 2022 conduct*” in paragraph 5B above, by publishing false, misleading and self-serving claims about Murdoch on the Crikey website and social media including as follows:

- (a) the allegation that Murdoch “*turned nuclear over a legitimate piece of journalism*” by “*sending a series of threatening letters*” when all he did was comply with the mandatory concerns notice process under the Act, and otherwise respond to letters sent on behalf of the respondents in relation to the Article, being a publication that was false and unreasonable and thus not legitimate journalism;
- (b) describing the Article as “*a routine piece of analysis*” when it contained no logical or coherent analysis to support its gratuitous allegations that Murdoch had committed various indictable offences;
- (c) describing the Article as “*public interest journalism*” and implying Private Media is hindered by Australia’s defamation laws in circumstances where Murdoch had nothing to do with the evidence being reported on in the Article and he was maliciously included, where malice is inimical to freedom of speech;
- (d) claiming that they seek to test “*this important issue of freedom of public interest journalism in a courtroom*” when they have instead embarked upon



a concerted campaign to undermine the legal process and to have the issue decided through the media and social media;

- (e) describing the Concerns Notice and subsequent letters as “*abuse of media power*” by a “*bully*” where:
- i. those letters were no different in content, tone or character to correspondence sent in other defamation claims by persons with little or no means;
  - ii. those letters were compliance by Murdoch with the mandatory legal process;
  - iii. they did not involve the use of media companies associated with Murdoch at all;
  - iv. Private Media, Fray, Beecher, Hayward and Keane are the only parties to the dispute who abused their media power including by covertly using another media organisation to harass Murdoch, posted dozens of social media posts and a number of articles on the Crikey website about the dispute whilst threatening “plenty more on this issue in the coming days” in their mass distributed email newsletter;
  - v. Private Media has engaged two law firms in the course of less than 2 months and paid substantial sums to advertise in an international newspaper and elsewhere;
  - vi. Beecher, a wealthy individual was party to the contrived scheme as pleaded in paragraph 5A, above;
  - vii. Private Media, Fray, Beecher, Hayward and Keane were the ones who sought to abuse their media power by conducting the Lachlan Murdoch Campaign, pleaded in paragraph 5A, above;
  - viii. The claims of intimidation, bullying and abuse of media power were part of a pre-planned contrivance developed by Private Media, Beecher, Hayward and Fray with the assistance of Popularis, as pleaded in paragraph 5A, above.
- (f) Describing what Murdoch sought as a “*series of lengthy legal demands*” sent by his lawyers “*over the past two months*” in circumstances where, other than the initial Concerns Notice, his letters were responsive and a genuine attempt to resolve the dispute.



- (g) Describing the references to Murdoch in the Article as only “*a headline and one sentence*” when the premise of the Article turns on the reference in the headline, sub-heading and conclusion which were repeated by Private Media and Keane in the social media posts promoting the Article.
  - (h) Describing the Article as an “*opinion piece*” where the accusations in it against Murdoch are asserted as fact.
  - (i) Claiming that the Article was not dissimilar to other stories in the US media, when no other story accused Murdoch of indictable offences in connection with January 6, specifically treason and traitorous conspiracies.
  - (j) Suggesting that by complaining about a malicious and false Article that Private Media made not attempt to verify with Murdoch prior to publication and in which he was accused, without any basis, of indictable offences, that Murdoch is hypocritically promoting censorship.
  - (k) Repeatedly claiming that their conduct towards Murdoch was an act of courage in the face of oppression when their primary aim was to increase their subscriptions for financial gain.
- 20.29. Emailing Murdoch’s lawyer in the evening of 22 August 2022 to give Murdoch an “opportunity to respond” to the many publications already on the Crikey website and heavily promoted by Private Media as set out in paragraph 5, above.
- 20.30. Seeking to harm Murdoch by placing a paid advertisement in the *Canberra Times* published on 23 August 2022, in the same terms as the NY Times ad, being also an attempt to harass and place undue pressure on Murdoch in relation to these proceedings.
- 20.31. Conducting themselves in bad faith and in order to promote the Crikey website, by publishing on 22 August 2022 the correspondence between the parties which was, on the part of Murdoch, genuine attempts to resolve the dispute in accordance with his obligations as a prospective litigant.
- 20.32. Their hypocrisy in co-ordinating the disingenuous promotional campaign referred to in the preceding sub-paragraphs whilst falsely claiming that such conduct was for the purpose of protecting independent journalism.
- 20.33. Private Media’s malice towards Murdoch evidenced by the matters set out above and its history of publishing frequent articles about Murdoch with baseless

allegations, having regard to the fact that in the last five years the Crikey website has referred to:

- (a) "Murdoch" in about 1,120 articles;
- (b) "Lachlan Murdoch" in at least 126 articles;
- (c) "Fox News" in over 390 articles.

20.34. Private Media and Fray's malice towards Murdoch in persisting in their claim that Murdoch has sought (over a period of time):

- (a) to intimidate them, having regard to the number of articles published on the Crikey website about Murdoch and that:
- (b) Private Media has never attempted to speak to Murdoch before any publication or seek his response.
- (c) Murdoch has only complained to Private Media about articles on the Crikey website on 4 occasions in that 5-year period (including about the Article the subject of this proceeding):
  - i. two of which resulted in take down of the publications, retractions and apologies and acknowledgements that the content in the publications were wrong;
  - ii. one which was amended to correct the misstatement concerning Murdoch; and
  - iii. the Article, which was (in the first instance) immediately removed and in relation to which Private Media, Keane and Fray admit that the Imputations were to their knowledge false.

20.34a Each of the facts and matters pleaded in the Reply to the Amended Defence filed on 15 November 2022.

20.34b The conduct of each of Private Media (through its guiding minds Beecher and Hayward) and Fray alleged in paragraph 5A above, in particular in criticising the correspondence sent by Murdoch's solicitor (describing it as "nuclear" etc) in circumstances where the correspondence sent on their behalf was only intended as part of a media and marketing campaign.

20.34c The conduct of each of Private Media (through its guiding minds Beecher and Hayward) and Fray alleged in paragraph 5A above, in particular in engaging in

conduct designed to cause Murdoch to sue them, and then imploring the public to pay for subscriptions and donate to their legal fund because they had unfairly been sued by Murdoch.

20.34d The conduct of each of Private Media (through its guiding minds Beecher and Hayward) and Fray alleged in paragraph 5A above, in particular seeking to engender sympathy because they were a small independent media company that had been sued by a billionaire and were thus at risk financially, when it was their intention and plan to be sued by Murdoch so that they could profit from subscriptions and advertising.

20.34e The furtherance of the marketing campaign devised by Beecher, Hayward and Fray in July and August 2022 by the conduct of these proceedings including:

- (a) the video and social media posts of Hayward on 22 September 2022 about the Defence filed by the respondents which inaptly described the issues in dispute in the proceedings;
- (b) during interviews given by Beecher on 25 August 2022 including to New Daily and Mumbrella on 25 August 2022;
- (c) the billboards and AFR front page advertisements published by Private Media since the commencement of the proceedings seeking subscribers while advertizing to Murdoch;
- (d) the ongoing social media posts by Private Media, or persons on their behalf including their “legal correspondent” and solicitor Bradley referring to Murdoch or the proceedings;
- (e) the article by Beecher entitled “Eric Beecher’s diary: I’m being sued by Murdoch” published on 3 November 2022 in Prospect Magazine (UK);
- (f) the conduct of Crikey “legal correspondent” and solicitor for the respondents Bradley on 23 November 2022 at a “Crikey Talks” event in which he described the content of affidavits served on behalf of Murdoch in these proceedings and made adverse comments about them.

20.34f The conduct of each of Private Media, Beecher, Hayward and Fray by including the knowingly false words in the Reposted Article on 15 August 2022 “We have decided to republish the article now, in order to clarify recent media reports about that legal threat”.



20.34g The conduct of Private Media by its representative and agent Bradley participating in and promoting on his Twitter account on 6 December 2022 “THE SHOT ANNUAL WRAP 2022 LIVE” which promotion included the words “FUCK MURDOCH”.

20.34h The hypocrisy of the conduct of each of Private Media, Beecher, Hayward, Fray and Keane in repeatedly claiming that they were conducting themselves in defence of public interest journalism against Murdoch, when their conduct in connection with the Article and the Reposted Article contravened ethical standards of journalism to which they claimed to subscribe, including as pleaded in the Reply to the Amended Defence.

20.35. Further particulars of aggravated damages will be provided in due course.

### **Injunctive relief**

21. Each of Private Media (by its servants or agents), Keane, Beecher, Hayward and Fray have published, promoted and republished the Article as set out above in this pleading.
22. The Reposted Article remains available for publication and is being published as at the date of this pleading from the Crikey website and through the many social media posts referred to in paragraphs 5, 5A and 5B, above.
23. Each of Private Media, Keane, Beecher, Hayward and Fray continue to promote the Article and the Reposted Article and its content as set out in this pleading.
24. Each of Private Media, Keane, Beecher, Hayward and Fray threaten and will continue to publish the Article and the Imputations unless restrained by the Court.

Date: December 2022

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Signed by John Churchill  
Lawyer for the applicant

This pleading was prepared by Sue Chrysanthou SC and John Churchill solicitor for the applicant, Lachlan Keith Murdoch.



### **Certificate of lawyer**

I, John Churchill, certify to the Court that, in relation to the statement of claim filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: December 2022

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Signed by John Churchill  
Lawyer for the applicant

**Crikey.**

Newsletters

# 1 Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator

2 New evidence to the January 6 committee shows just how treacherous Donald Trump was, but will it prise loose his grip on the Republicans?  
BERNARD KEANE JUN 29, 2022

3



4

DONALD TRUMP ON A VIDEO SCREEN AS CASSIDY HUTCHINSON TESTIFIES ON TUESDAY (IMAGE: EPA/MICHAEL REYNOLDS)

The House Select Committee to Investigate the January 6th Attack on the United States Capitol has already exposed extensive evidence of a plot by Donald Trump and his co-conspirators to overturn the 2020 presidential election result. But yesterday's



evidence by Cassidy Hutchinson, the former senior aide to Trump's chief of staff Mark Meadows, has confirmed his treachery and violent intent.

- 5 Hutchinson's evidence shows that Trump was aware of how heavily armed many of the attendees of his rally and planned march on the Capitol building were on January 6 - "I don't fucking care that they have weapons," he said - and that he intended all along to lead them in the march until prevented by his own driver (whom, Hutchinson claimed to have heard was physically attacked by Trump). She also says her boss, Meadows, said that Trump believed protesters were right to call for the hanging of then vice-president Pence for refusing to overturn the result on January 6.

6



Jan 6 hearings: can Trump supporters be returned to the American fold?

- 7 Trump's crimes go beyond attempting to subvert the election outcome and now extend to inciting an armed mob to march on the Capitol to physically prevent the confirmation of the outcome - a mob he intended to lead himself, and whose murderous intent he thought was appropriate.
- 8 But despite claims that Trump and his circle are shocked at Hutchinson's testimony - he is now trying to downplay her role, despite her occupying a key position in the functioning of his inner sanctum - will this confirmation of Trump's unhinged nature and enthusiasm for an armed mob dent his popular support or political support within the Republican Party?

- 9 If you're a Trump supporter at this point, it's unlikely any revelation about him will shift your allegiance. For many of his fans, the image of him trying to wrest the steering wheel of his limousine in order to drive it to lead the march is exactly the one they already have of him - a man determined to break any rule necessary to take charge. It is the very *transgressive* nature of Trump's actions that, far from alienating his supporters, bind them ever more closely to him - they serve as a demonstration of his commitment to deliver for them, no matter what the cost, even if he tramples on democracy and the rule of law, and costs people their lives.
- 10 And politically, large parts of the GOP remain in thrall to Trump. Despite [claims that his influence](#) has downgraded from outright control to merely being the most potent voice, and the rise of [an even more extreme "MAGA" movement](#) that doesn't take its direction from Trump, his endorsement is still eagerly sought by Republicans and his criticism feared. He remains, far and away, [the preferred choice](#) of Republican voters for the 2024 presidential election.

11



Trump declares war on electoral process as the right prefers chaos over order

..... >

- 12 Comparisons with Watergate or any previous political scandal in the US are meaningless. Trump might share profound personality flaws and psychotic characteristics with Richard Nixon, but Nixon - a congressman, then twice elected vice-president and twice elected president - was an establishment political figure.



- 13 He felt entitled to break the law, but his actions were those of a paranoid terrified of what information he didn't have and that others had within the conventional system of American politics, despite his landslide reelection in 1972. And his actions in covering up Watergate and trying to contain the damage from it so alienated senior members of his party that they turned against him. His resignation - imagine Trump ever resigning - brought the immediate crisis of Watergate to a close, if not the enduring damage it did to government.
- 14 None of these applies to Trump. He thinks nothing of the destruction of American democracy itself. Far from avowing "I'm not a crook", Trump boasted he could murder people in broad daylight and his supporters would still love him. His election loss didn't bring to an end the crisis he inflicted on the American political system, it simply propelled it into a new and perhaps just as dangerous phase.
- 15 And Nixon didn't have the support of the world's most powerful media company, which continues - even in the face of mountains of evidence of Trump's treachery and crimes - to peddle the lie of the stolen election and play down the insurrection Trump created. If Trump ends up in the dock for a variety of crimes committed as president, as he should be, not all his co-conspirators will be there with him. Nixon was famously the "unindicted co-conspirator" in Watergate. The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.

16 ABOUTTHEAUTHOR

Bernard Keane

POLITICS EDITOR @BERNARDKEANE

Bernard Keane is *Crikey's* political editor. Before that he was *Crikey's* Canberra press gallery correspondent, covering politics, national security and economics.



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## Schedule B

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1

Trump is a confirmed unhinged traitor. And Murdoch is his unindicted co-conspirator

2

New evidence to the January 6 committee shows just how treacherous Donald Trump was, but will it prise loose his grip on the Republicans?

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3



DONALD TRUMP ON A VIDEO SCREEN AS CASSIDY HUTCHINSON TESTIFIES ON TUESDAY (IMAGE: EPA/MICHAEL REYNOLDS)

4

The House Select Committee to Investigate the January 6th Attack on the United States Capitol has already exposed extensive evidence of a plot by Donald Trump and his co-conspirators to overturn the 2020 presidential election result. But yesterday's evidence by Cassidy Hutchinson, the former senior aide to Trump's chief of staff Mark Meadows, has confirmed his treachery and violent intent.

5

Hutchinson's evidence shows that Trump was aware of how heavily armed many of the attendees of his rally and planned march on the Capitol building were on January 6 — "I don't fucking care that they have weapons," he said — and that he intended all along to lead them in the march until prevented by his own driver (whom, Hutchinson claimed to have heard was physically attacked by Trump). She also says her boss, Meadows, said that Trump believed protesters were right to call for the hanging of then vice-president Pence for refusing to overturn the result on January 6.

7



Trump's crimes go beyond attempting to subvert the election outcome and now extend to inciting an armed mob to march on the Capitol to physically prevent the confirmation of the outcome — a mob he intended to lead himself, and whose murderous intent he thought was appropriate.

6

Jan 6 hearings: can Trump supporters be returned to the American fold?

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8

But despite claims that Trump and his circle are shocked at Hutchinson's testimony — he is now trying to downplay her role, despite her occupying a key position in the functioning of his inner sanctum — will this confirmation of Trump's unhinged nature and enthusiasm for an armed mob dent his popular support or political support within the Republican Party?

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9 If you're a Trump supporter at this point, it's unlikely any revelation about him will shift your allegiance. For many of his fans, the image of him trying to wrest the steering wheel of his limousine in order to drive it to lead the march is exactly the one they already have of him — a man determined to break any rule necessary to take charge. It is the very *transgressive* nature of Trump's actions that, far from alienating his supporters, bind them ever more closely to him — they serve as a demonstration of his commitment to deliver for them, no matter what the cost, even if he tramples on democracy and the rule of law, and costs people their lives.

10 And politically, large parts of the GOP remain in thrall to Trump. Despite claims that his influence has downgraded from outright control to merely being the most potent voice, and the rise of an even more extreme "MAGA" movement that doesn't take its direction from Trump, his endorsement is still eagerly sought by Republicans and his criticism feared. He remains, far and away, the preferred choice of Republican voters for the 2024 presidential election.



11 Trump declares war on electoral process as the right prefers chaos over order

Comparisons with Watergate or any previous political scandal in the US are meaningless. Trump might share profound personality flaws and psychotic characteristics with Richard Nixon, but Nixon — a congressman, then twice elected vice-president and twice elected president — was an establishment political figure.

He felt entitled to break the law, but his actions were those of a paranoid terrified of what information he didn't have and that others had within the conventional system of American politics, despite his landslide reelection in 1972. And his actions in covering up Watergate and trying to contain the damage from it so alienated senior members of his party that they turned against him. His resignation — imagine Trump ever resigning — brought the immediate crisis of Watergate to a close, if not the enduring damage it did to government.

14 None of these applies to Trump. He thinks nothing of the destruction of American democracy itself. Far from avowing "I'm not a crook", Trump boasted he could murder people in broad daylight and his supporters would still love him. His election loss didn't bring to an end the crisis he inflicted on the American political system, it simply propelled it into a new and perhaps just as dangerous phase.

15 And Nixon didn't have the support of the world's most powerful media company, which continues — even in the face of mountains of evidence of Trump's treachery and crimes — to peddle the lie of the stolen election and play down the insurrection Trump created.


- 15 (cont) If Trump ends up in the dock for a variety of crimes committed as president, as he should be, not all his co-conspirators will be there with him. Nixon was famously the “unindicted co-conspirator” in Watergate. The Murdochs and their slew of poisonous Fox News commentators are the unindicted co-conspirators of this continuing crisis.

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Bernard Keane is *Crikey*'s political editor. Before that he was *Crikey*'s Canberra press gallery correspondent, covering politics, national security and economics.



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