

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

CASSANDRA FAIRBANKS, an individual,	)	
	)	
Plaintiff,	)	Civil Action No.: 1:17-cv-01052
	)	
v.	)	<b>(Jury Trial Demanded)</b>
	)	
EMMA ROLLER, an individual,	)	
	)	
Defendant.	)	
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**FIRST AMENDED COMPLAINT**

**Introduction**

One journalist used her reputational perch from highly esteemed publications to smear the reputation of a competitor journalist simply because of politics. Defendant Emma Roller, Politics Editor for Fusion (owned by Univision), held herself out as a professional journalist abiding the professional standards of care ascribed to the publications she wrote for, including the *New York Times*, *The Atlantic*, and *Salon*. Plaintiff Cassandra Fairbanks, an advocate journalist, wrote for grassroots publications of the independent left and the independent right, prominently supporting Bernie Sanders before she shifted to Donald Trump. Roller falsely published to the world that Fairbanks flashed a "white power gesture" from the White House, and falsely published to the world that the Anti-Defamation League had identified the gesture as a "white power gesture." (In fact, the ADL identified the gesture claim as a "hoax.") Roller's captioned photo was shared around the world, and carried by both *Yahoo News* links and the *Independent* due to Roller's reputation as a professional journalist. But in reality, there was no "white power gesture"; Fairbanks, a life-long civil rights advocate, had flashed the "ok" gesture,

which the ADL had said was "not" any kind of "white power" gesture. But the falsity traveled twice around the world before the truth could get its dress on.

The First Amendment has never been a license to libel. Fairbanks received a White House press pass and posted a picture from the pressroom flashing the "OK" hand gesture with fellow new media journalist Mike Cernovich. Emma Roller took Fairbanks' photo, and posted on Twitter the picture of Fairbanks with a caption claiming that she was flashing a "white power gesture" from the White House. Roller knew this to be false. Roller also knew her falsity about Fairbanks could create a real risk of violence towards Fairbanks, whose six-year old daughter had already been threatened by violent groups (primarily Antifa) who opposed Fairbanks' high-profile switch of support from Bernie Sanders to Donald Trump.

The 2016 campaign season unleashed a burgeoning gap within the world of journalism. The primary gatekeepers of news found their position threatened by a new form of grassroots journalists, using social media to access the broader public. Giving White House press passes to those grassroots journalists, like Cassandra Fairbanks, over the "gatekeeper" journalists like Emma Roller, intensified this conflict. These gatekeepers held themselves out as superior to the grassroots journalists, claiming as their authority their abiding by objective standards of professional care, formalized education as journalists, and subscription to the social media policies of their esteemed journalistic publishers. Unfortunately, some of these gatekeepers abandoned this professional journalistic standard of care to wage a personal, political war on their ideological adversaries and grassroots competitors. They used their esteemed professional reputations to engage in "fake news" for the "higher calling" of advocating for their favored groups even when it meant their readers would be fed misinformation.

Who made that express "argument for fake news"? Emma Roller, in a tweet she tried to hide, but was later uncovered. Roller masks her partisan advocacy as objective journalism, misuses her reputational ties to the *New York Times* to lend credibility to her claims, and malevolently spreads racial hysteria to smear her political opponents. Her attack on Fairbanks was neither accidental nor merely negligent; it was malicious, malevolent, and the product of a

premeditated pattern of reckless disregard for the reputational interests of her competitor, a politically-dissident journalist.

Roller's choice of Fusion for employment is equally no coincidence. While Fusion held itself out as a professional journalistic organization, it has quietly made the internal choice to favor politicized “click-bait” and adopted Roller's “argument for fake news” to serve a “higher calling” of ideological advocacy disguised as honest journalism. A former Fusion reporter blew the whistle on Fusion's conduct, independent left-leaning journalist Tim Pool, when he left Fusion's employment for precisely this reason: its abandonment of commitment to professional journalistic standards of care.

The First Amendment protects honest journalism, not fake news. This case seeks to return journalism to that higher calling.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 as complete diversity exists and the matter in controversy exceeds \$75,000, exclusive of interest and costs.
2. This Court has personal jurisdiction over the Defendant because the false and defamatory statement made by Defendant was published in the District of Columbia and the Defendant resides within the District of Columbia.
3. Venue is proper in this District under 28 U.S.C. § 1391(b) because all or a substantial portion of the events that gave rise to Plaintiff's claims transpired in the District of Columbia, including the publication of the defamatory falsehood and damage to Plaintiff's reputation.

### **THE PARTIES**

4. Plaintiff Cassandra Fairbanks is a reporter for Bigleaguepolitics.com, a political activist, and a resident of the State of Maryland.

5. Defendant Emma Roller is a senior politics reporter at Fusion.net and a resident of the District of Columbia. Defendant has a Twitter.com following of approximately 23,000 people.

### **STATEMENT OF FACTS**

#### **The Defamatory Tweet**

6. On April 28, 2017, Defendant Emma Roller published a photo via her Twitter account of the Plaintiff under a caption Roller wrote: “just two people doing a white power hand gesture in the White House.”
7. On April 28, 2017, Roller further published a claim that the Anti-Defamation League (“ADL”) identified Fairbanks’ hand signal as a two-handed hand sign wherein one hand forms a letter “W” and the other hand forms a letter “P,” to represent “WP” or “White Power.”
8. On April 28, 2017, and in the days thereafter, Roller’s post was republished across the web, re-shared by other Twitter users at least 6,827 times, received at least 7,169 “likes” from other Twitter users, and the story was picked up by major news outlets including *The Independent*.
9. Roller’s story led to republishing of the story across the world, as a leading article on Yahoo, and pervaded the social media press. Of note, no serious publication in America republished the false story by Roller, and Fusion itself refused to publish the false story by its own reporter.
10. The ADL rebuked Roller’s claim a few days later, publishing an article on May 1, 2017, making clear they had never called the hand signal used by Fairbanks (the “OK” gesture) as a white power symbol. Despite this, Roller failed to issue a retraction or correction.
11. Roller knew at the time of her publishing that Fairbanks was a long-time civil rights writer, journalist, and advocate, who backed Donald Trump’s candidacy for the Presidency only also after protesting civil rights violations against a wide range of citizens, including women and African-Americans, and after Fairbanks had previously

backed Bernie Sanders's presidential bid. Roller knew Fairbanks was not using "white power" signals before she published her false stories on April 28, 2017.

12. Roller knew her story was false when the ADL rebuked the very basis of her claims, yet Roller still refused to retract or correct the story at any time. Instead, upon the eve of filing suit, Roller tried to erase her tracks, deleting her published stories about this, and yet not correcting anything for the world to know the truth.

**Roller's Intentional Disregard for Professional Standards of Due Diligence**

13. Professional standards of due diligence require that a reporter should research a photo, meme, or gesture before presuming it means anything that would reflect badly on the person in the photo, meme, or gesture. As Bloomberg's social media policy states, "Be skeptical of any information forwarded on a social network. Memes and misinformation spread more rapidly online than anywhere else. We must apply the same standards of verification as we would to any other source." Jim Romenesko, *Bloomberg policy: 'Ask questions first. Tweet later'*, Poynter (April 27, 2011), <https://www.poynter.org/2011/bloomberg-policy-ask-questions-first-tweet-later/129734/>.
14. The due diligence in this case was simple to perform: one could check the definitions of the gesture available on Twitter itself, perform a 5-second "Google Image Search", or otherwise look for similar photos of the gesture. In this case, doing so would reveal the gesture used by Fairbanks was the "ok" gesture, as revealed in Twitter's own available gesture gifs and commonly found in pictures of everyone from Jay-Z to President Obama himself.
15. The standards of due diligence required reaching out to the person accused before interpreting a gesture as a "white power" gesture, especially given the inflammatory nature of the accusation and reputational impact of such an allegation. NPR's ethics handbook warns its journalists that "errors that may damage reputations or bring about grief are especially dangerous, and extra precautions should be taken to avoid them."

NPR Ethics Handbook, *Accuracy*, <http://ethics.npr.org/category/a1-accuracy/>. Here again, Roller failed that test.

16. The standards of due diligence for a professional journalist required reviewing the actual website of the Anti-Defamation League, and speaking to the author of any article on the gesture. In this case, Roller, in doing either of those, would have discovered the hand gesture used by Fairbanks was the "ok" gesture, and not a "white power" gesture.
17. The standards of care for a professional journalist compel them to correct any mistake made. Here, even after Roller was told repeatedly that her caption was false, she refused to issue any correction, and she did not delete the story for a substantial time period thereafter.

**COUNT I: DEFAMATION PER SE**

18. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 of this Complaint as if fully set forth herein.
19. Defendant wrote and published on her Twitter page the defamatory caption over Plaintiff's photo falsely accusing Plaintiff of making a white power hand gesture.
20. Defendant published the caption without privilege and without Plaintiff's consent.
21. The serious nature of the allegation that Plaintiff made a white power hand gesture should have heightened Defendant's due diligence in confirming the veracity of the claim before publishing the caption. Defendant acted with actual malice when she published the caption either with actual knowledge that the caption was not true or with reckless disregard as to its truth. At a minimum, Defendant failed to exercise reasonable care when she published such a serious allegation against the Plaintiff.
22. By falsely claiming that the Plaintiff made a white power hand gesture, the Defendant insinuated that the Plaintiff held white supremacist beliefs and has proximately caused injury to Plaintiff's professional reputation and credibility.
23. Even after the Plaintiff informed the Defendant in writing that she did not make a white power hand gesture, the Defendant failed to retract the caption.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Cassandra Fairbanks respectfully prays for judgment as follows:

Plaintiff only seeks per se damages sufficient to remediate the reputational injury inflicted and deter future such conduct by wayward journalists from smearing their politically divergent and ideologically dissident competitors. Per prior precedent in this Circuit, that amount would be \$250,000, and is the amount Plaintiff seeks to obtain via the warranted remedy.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable.

DATED: September 8, 2017

Respectfully submitted,  
Cassandra Fairbanks  
By Counsel

/s/ Robert E. Barnes  
Robert E. Barnes, Esq.  
BARNES LAW  
601 South Figueroa Street, Suite 4050  
Los Angeles, California 90017  
Telephone: (310) 510-6211  
Facsimile: (310) 510-6225  
E-mail: robertbarnes@barneslawllp.com

/s/ Daniel D. Mauler  
Daniel D. Mauler (D.C. Bar No. 977757)  
REDMON, PEYTON & BRASWELL, LLP  
510 King Street, Suite 301  
Alexandria, Virginia 22314  
703-684-2000 (Tel)  
703-684-5109 (Fax)  
dmauler@rpb-law.com

*Counsel for Plaintiff Cassandra Fairbanks*

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on September 8, 2017, a true and accurate copy of the foregoing was electronically filed via the Court's CM/ECF system. Additionally, the undersigned counsel sent a true and accurate copy of the foregoing to the following by the manner indicated:

Laura R. Handman  
Eric Feder  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, NW, Suite 800  
Washington, DC 20006-3401  
laurahandman@dwt.com  
ericfeder@dwt.com  
(Via electronic mail)  
*Counsel for Defendant Emma Roller*

/s/ Daniel D. Mauler  
Daniel D. Mauler (D.C. Bar No. 977757)  
REDMON, PEYTON & BRASWELL, LLP  
510 King Street, Suite 301  
Alexandria, Virginia 22314  
703-684-2000 (Tel)  
703-684-5109 (Fax)  
dmauler@rpb-law.com  
*Counsel for Plaintiff Cassandra Fairbanks*