UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OZY MEDIA, INC., *Plaintiff,* v. BENJAMIN SMITH, SEMAFOR, INC., and BUZZFEED, INC. *Defendants*.	Civil Action No. 1:23-cv-9412 JURY TRIAL DEMANDED

COMPLAINT

Plaintiff OZY Media, Inc. ("OZY"), for its complaint against Defendants Benjamin Smith, Semafor, Inc. ("Semafor"), and BuzzFeed, Inc. ("BuzzFeed"), alleges as follows:

NATURE OF THE ACTION

1. At its core, this case is about Defendant Ben Smith's willful misappropriation of OZY's trade secrets—in knowing and direct violation of a mutual nondisclosure agreement—to create, launch, operate, lure investors and advertisers to, and ultimately generate significant revenue for his own media company, Semafor. But this case is much more; it is also about a total disregard for journalistic ethics and integrity, corporate greed and profiteering, large-scale public deception, and the willful taking of another man's dream.

2. In January 2022, after abruptly resigning from The New York Times where he reported on, commented about, and investigated other media companies, Ben Smith announced that he, along with friend and former Bloomberg Media Group CEO Justin Smith, were starting their own global media company. The Smiths promised the public a "new kind of media

company,"[1] that would be geared towards the "200 million college-educated people around the world," would focus on avoiding a "perception of bias," and would not "cater[] to social media."[2] The Smiths would target the wealthy, socially conscious investment community for start-up capital, lead off with targeted subscription email newsletters and a large-scale live-event division, and begin developing a department devoted specifically to creating branded video content in partnership with corporate advertisers. The Smiths laid out a vision that seemed new and never-before-seen. But in reality, Semafor was a spitting image of the media company that Carlos Watson had formed a decade earlier: OZY. And it turns out that Ben Smith, while editor-in-chief of BuzzFeed, had gotten a months-long look at exactly how OZY operated when BuzzFeed tried to buy it.

3. In 2019, three years before the Smiths announced Semafor, BuzzFeed was in financial freefall. Its corporate directors were "restless"[3] after the company had racked up more than $150 million in losses the previous three years.[4] BuzzFeed CEO Jonah Peretti's first plan to appease the Board was to task Ben Smith, whose news division was "approaching $100 million in losses,"[5] with trying to sell his division to a deep-pocketed investor.[6] Smith approached Peter

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[1] Sara Fischer, *Media disrupters chase global audience*, Axios (Jan. 5, 2022), https://www.axios.com/2022/01/05/ben-justin-smith-news-startup.

[2] Peter Kafka, *Ben Smith had one of the coolest jobs in journalism. Now he wants to do something else.*, Vox (Jan. 4, 2022), https://www.vox.com/recode/22867616/ben-smith-justin-smith-new-york-times-bloomberg.

[3] Benjamin Eli Smith, *Traffic: Genius, Rivalry, and Delusion in the Billion-Dollar Race to Go Viral* ("*Traffic*"), at 270 and 285.

[4] *See* Amol Sharma & Lukas I. Alpert, *BuzzFeed Set to Miss Revenue Target, Signaling Turbulence in Media*, *Wall St. J.* (Nov. 16, 2017), https://www.wsj.com/articles/buzzfeed-set-to-miss-revenue-target-signaling-turbulence-in-media-1510861771; BuzzFeed Inc., Form S-4 Registration Statement at 21 (filed July 30, 2021), https://www.sec.gov/Archives/edgar/data/1828972/000110465921098380/tm2122219-1_s4.htm.

[5] *Traffic* at 282.

[6] *See* Jill Abramson, *Merchants of Truth: The Business of News and the Fight for Facts* at 343-44 ("*Merchants of Truth*") (reporting on BuzzFeed's approach to Powell Jobs); Matthew Garrahan

Lattman, the close advisor to Laurene Powell Jobs—the widow of Apple's Steve Jobs and a powerhouse new media investor and entrepreneur in her own right—but Smith could not close.[7] Plan B to "revive BuzzFeed's fortunes" and buy its way to profitability was a series of mergers with new media upstarts.[8] But that too failed when BuzzFeed could not close a deal with Group Nine Media over the Summer of 2019, leaving Peretti in a state of "desperation."[9]

4. In contrast to BuzzFeed's freefall, 2019 was shaping up quite differently for Carlos Watson and his media venture, OZY. Whereas BuzzFeed's stock-in-trade was clickbait, memes, and pseudo-news 'scoops,' OZY had figured out how to create original, premium content. While BuzzFeed lived and died by its website traffic, OZY figured out how to build a multi-platform brand, with premium TV and digital video shows, award-winning podcasts, daily subscription newsletters, a unique awards program (the OZY Genius Awards), and a flagship events business centered around OZY Fest. OZY's audience was more diverse, educated, and engaged than BuzzFeed's. OZY had learned to sell advertisers on big-dollar, long-term contracts, escaping the treadmill of BuzzFeed's short-term, smaller-dollar ad deals. And Watson had figured out how to build something that BuzzFeed and Peretti lacked: a roster of supportive investors, anchored by his friend of 20+ years and OZY investor, Powell Jobs. In short, OZY had figured out how to build what BuzzFeed was missing.

5. Sensing the upstart's promise, BuzzFeed targeted OZY for acquisition. In Ben Smith's own words, OZY was:

& Shannon Bond, *BuzzFeed News in Talks with Powell Jobs Group*, Financial Times (Feb. 1, 2018), https://www.ft.com/content/3d5d892c-0778-11e8-9650-9c0ad2d7c5b5.

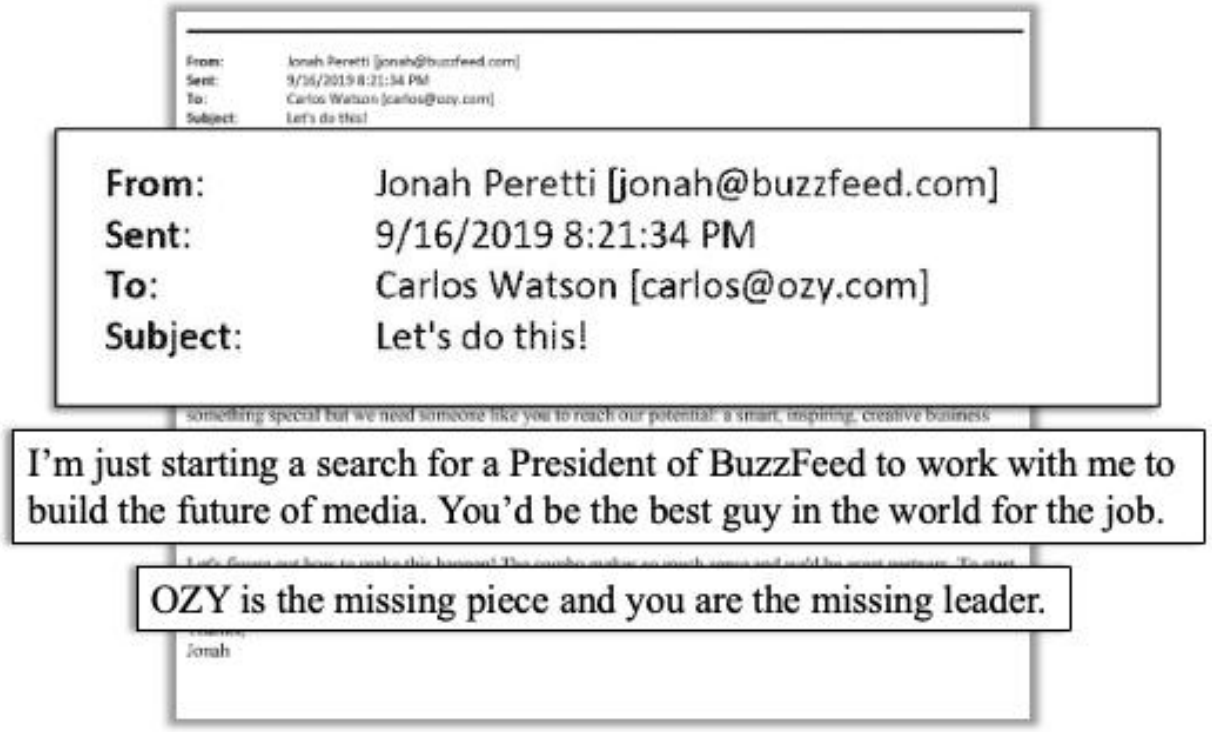
[7] *Merchants of Truth* at 344.

[8] Edmund Lee, *Founder's Big Idea to Revive BuzzFeed's Fortunes? A Merger With Rivals*, *N.Y. Times* (Nov. 19, 2018, https://www.nytimes.com/2018/11/19/business/media/buzzfeed-jonah-peretti-mergers.html.

[9] *Traffic* at 283-84.

> the solution to all of Jonah's problems. ... Powell Jobs could buy out the rest of BuzzFeed's board and invest in the company at a valuation inflated enough that it would be easy for BuzzFeed, in turn, to buy Ozy for her. Jonah would be rid of the restless board members, and he'd have a new, Black [President] on the board at a moment when media companies were increasingly sensitive to their lack of diversity.[10]

6. It was Ben Smith himself who, in August 2019, initiated conversations between Watson and his counterpart at BuzzFeed, Peretti. Peretti was enamored with OZY—and Watson—and on September 16, wrote Watson an email lauding OZY as "the missing piece" and Watson as "the missing leader." He titled the email, "Let's Do This!"

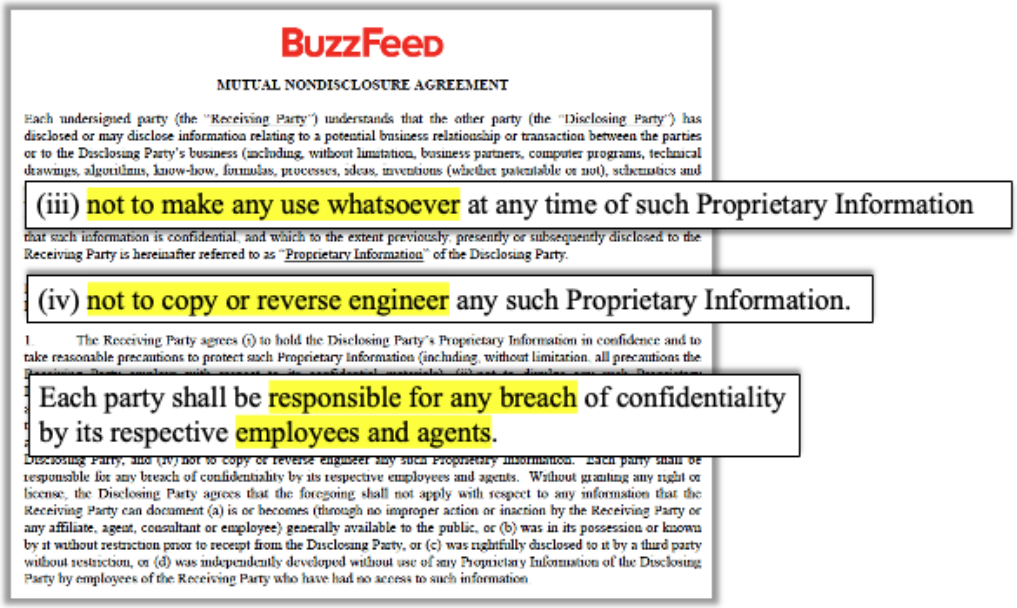


September 16, 2019 Email from J. Peretti to C. Watson

7. On September 23, 2019, OZY and BuzzFeed signed and executed a Mutual Nondisclosure Agreement ("Mutual NDA") (attached as Exhibit A) which expressly protected each company's "Proprietary Information" from not only disclosure outside of the acquisition

[10] *Traffic* at 285.

process, but also from any "use whatsoever" and any copying or "reverse engineer[ing]"—including by any employees who gained access to the information, which of course included Ben Smith.



BuzzFeed

MUTUAL NONDISCLOSURE AGREEMENT

Each undersigned party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to a potential business relationship or transaction between the parties or to the Disclosing Party's business (including, without limitation, business partners, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and

(iii) not to make any use whatsoever at any time of such Proprietary Information

that such information is confidential, and which to the extent previously, presently or subsequently disclosed to the Receiving Party is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

(iv) not to copy or reverse engineer any such Proprietary Information.

1. The Receiving Party agrees (i) to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the

Each party shall be responsible for any breach of confidentiality by its respective employees and agents.

Disclosing Party, and (iv) not to copy or reverse engineer any such Proprietary Information. Each party shall be responsible for any breach of confidentiality by its respective employees and agents. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (b) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party without restriction, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who have had no access to such information

8. The Mutual NDA gave BuzzFeed, Smith, and other BuzzFeed executives access to OZY's closely held playbook for success, including its financial records, revenue streams, lists of investors and advertisers, audience and traffic metrics, unique methodologies and strategies for pitching investors and securing advertisers, and past, present, and future content libraries. In short, BuzzFeed got exactly what it wanted: the entire playbook and operating manual for OZY.

9. Smith was more than mere matchmaker for Peretti and Watson; he played a central role in the diligence process, as would be expected for someone who held significant equity in BuzzFeed. Among other things, Smith strategized with Peretti on how to approach Powell Jobs, and extracted information from Watson about OZY's large advertising contracts and events business.

10. By the time BuzzFeed, Peretti, and Smith had looked under OZY's hood and into its most coveted information, Peretti was convinced not only that he needed OZY, but that he

needed Watson as well to preside over the new BuzzFeed-OZY machine. Beginning in October 2019 and until the end of January 2020, BuzzFeed made a series of escalating offers to buy OZY, ultimately offering a package that included a $250 million purchase price plus $30 million in specific incentives, the position of president, and a spot on the Board of Directors for Watson. The deal also envisioned investments by and a spot on the Board for OZY's earliest supporter, Laurene Powell Jobs.

11. Watson was flattered, but he decided that BuzzFeed needed OZY more than OZY needed BuzzFeed. OZY was building something special, and Watson was not ready to put his dream in the hands of someone else just yet—much less BuzzFeed. So he declined BuzzFeed's almost $300 million offer.

12. Watson's decision to turn down Peretti's offer was prescient. By Summer 2021, OZY's average monthly audience exceeded 70 million across its multiple platforms. It boasted five premium newsletters, 12 TV shows, 10 podcasts, and was gearing up for its next OZY Fest that Fall. OZY had closed more than $250 million in advertising deals since it turned down BuzzFeed's offer, had partnered with Oprah Winfrey and Bill Gates on several projects, won an Emmy award, and was barreling toward a $2 billion valuation in its upcoming Series E financing round.

13. Meanwhile, days after Watson declined Peretti's last offer, Ben Smith announced that he would resign as BuzzFeed's editor-in-chief to become a media columnist at The New York Times—a decision that left many in the industry scratching their heads at the time.[11] When Ben Smith left BuzzFeed, it was widely known that he had retained an equity stake in the company—

[11] *See, e.g.*, Simon Owens, *What Ben Smith's departure says about the future of BuzzFeed News*, Simon Owens's Media Newsletter (Jan. 30, 2020), https://simonowens.substack.com/p/what-ben-smiths-departure-says-about.

in one of his earliest columns for The New York Times, Smith admitted this fact but promised his readers that he would "divest those options as quickly as I could, and certainly by the end of the year [2020]."[12] Ben Smith would break those promises to his readers over and over again.

14. In late September 2021, still a significant stakeholder in BuzzFeed—and therefore in a position to benefit from the publication of negative articles about its media rivals—and with intimate knowledge from the BuzzFeed due diligence of just how real OZY's traffic, revenue, and premium content were, Ben Smith used his media columnist platform at The New York Times to publish a series of hit pieces that falsely accused OZY of being the "Theranos" of media companies, with a fake product, no real audience, and minimal actual value.

15. Among Ben Smith's many false and misleading claims about OZY, one stood out as an absolute affront of basic journalistic ethics and integrity. In the first report of his series on OZY, Smith told readers that he was only "peripherally involved in acquisition talks between the companies [BuzzFeed and OZY]." That was a bald-faced lie—Smith was, next to Peretti himself, integral and directly involved in all phases of BuzzFeed's efforts to buy OZY. Ben Smith repeated and even elaborated on that same lie throughout his media victory lap. For example, when CNBC's Andrew Ross Sorkin brought up BuzzFeed's attempted acquisition of OZY and Smith's role in it, Smith squirmed, then lied again:

> Yeah, let's see, uh, you know, I, I wasn't, uh, I, I, uh, **I was on the margins of that process**, but, **didn't know a lot about it**, can't really speak to it, the, um, **I left while it was happening**, the, um, so, people stop telling me things, um ... (emphases added)[13]

[12] Ben Smith, *How a New Breed of Union Activists Is Changing the Rules (and Newsrooms)*, *N.Y. Times*, May 3, 2020, https://www.nytimes.com/2020/05/03/business/media/coronavirus-union-newsrooms.html.

[13] CNBC Television, *NY Times' Smith discusses Ozy Media's rapid downfall following exposé*, YouTube (Oct. 4, 2021), https://www.youtube.com/watch?v=2mpLcIPSz6g&t=128s. (all emphasis added unless otherwise noted).



October 4, 2021 Appearance by Ben Smith on CNBC's Squawk Box

16. Ben Smith's false claims went viral and devastated OZY. Within days, OZY suspended operations, almost all of its investors and advertisers jumped ship, and Watson was left almost entirely alone to try and pick up the pieces.

17. Just over two months after Ben Smith's bombshell reporting, BuzzFeed kicked off its initial public offering via a special purpose acquisition company transaction (SPAC IPO), with Smith's stock options in BuzzFeed intact. On December 6, 2021, BuzzFeed went public and, upon information and belief, Ben Smith cashed in.

18. The next month, armed with his BuzzFeed profits and everything he learned about OZY's secret playbook for launching, operating, and generating revenue from a multi-platform, cross-functional media company, Ben Smith and his new partner Justin Smith announced Semafor.

19. Within a year of its launch, Semafor had raised over $30 million in capital (including from affiliates of former OZY investors) and was "outpacing" its revenue projections. Meanwhile Watson, his family, and the others who invested everything they had into OZY have been left with nothing.

20. OZY brings this lawsuit to hold Defendants Ben Smith and Semafor accountable for the theft and misappropriation of OZY's trade secrets it spent years developing, implementing, and protecting, to hold BuzzFeed accountable for its breach of its express covenants, to recoup the catastrophic damages caused by Defendants' conduct, and to recover the profits Defendants have reaped as a direct result of their misconduct.

PARTIES

21. Plaintiff OZY Media, Inc. is a now-inactive multi-platform news and entertainment company co-founded and majority owned by Emmy Award-winning journalist, entrepreneur, and former banker Carlos Watson. It is headquartered in California and incorporated in Delaware.

22. Defendant Benjamin Smith is a journalist and the co-founder and editor-in-chief of Semafor, Inc., a global news organization. Smith is a resident of Brooklyn, New York.

23. Defendant Semafor, Inc. is a global news organization founded by Defendant Smith and former Bloomberg Media Group CEO Justin Smith in January 2022 and launched in October 2022. Semafor is headquartered in and has its principal place of business in New York, and is incorporated in Delaware.

24. Defendant BuzzFeed, Inc. is an American internet media, news, and entertainment company founded in 2006 by Jonah Peretti, John S. Johnson III, and Kenneth Lerer. Buzzfeed is headquartered in and has its principal place of business in New York, and is incorporated in Delaware.

JURISDICTION & VENUE

25. This Court has original subject matter jurisdiction under 28 U.S.C §1331because this action involves a claim arising under the laws of the United States, the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 *et seq*. ("DTSA"), and supplemental jurisdiction under 28 U.S.C. §

1367 because all other claims are so related to OZY's claim for violation of the DTSA that they form part of the same case or controversy.

26. This Court has personal jurisdiction over Defendants Benjamin Smith, Semafor, Inc., and BuzzFeed Inc. because Defendant Smith is a New York resident, residing in Brooklyn, New York, and Defendants Semafor and BuzzFeed are both headquartered in New York, and their principal places of business are in New York.

27. The Eastern District of New York is the proper venue pursuant to 28 U.S.C. § 1391 because Defendant Ben Smith resides in Brooklyn, New York and Defendants Semafor and BuzzFeed are New York-based companies over which this Court has personal jurisdiction.

FACTUAL ALLEGATIONS

I. Watson, With the Financial and Moral Support of His Family, Creates a Genuine Unicorn: a Black-Owned News and Entertainment Company Focused on Directly Engaging a Diverse Audience By Delivering High-Quality Content Across Multiple Platforms.

28. Raised in Miami by his educator parents and a graduate of Harvard *with honors* and of Stanford Law—where he was editor of the Stanford Law review and student government president—Carlos Watson built a career succeeding across multiple industries and fields: from a political organizer helping President Bill Clinton win Miami-Dade County to management consultant at McKinsey & Company, from building two separate education companies of his own to fostering investments in education companies as Global Head of Education Investment Banking at Goldman Sachs, and then as a journalist and on-air personality at Fox News, CNN, CNBC, MSNBC, Court TV, and BET.

29. In 2012, with the idea in place that the U.S. media landscape demanded a new and innovative approach, Watson moved back to the Bay Area to take care of his ailing mom. At her encouragement and with her help, he began to draw up a business plan for an innovative news and

information company designed to attract diverse audiences and then vault them ahead by profiling "the new and the next"—rising stars, new trends, and big ideas—months or even years before they were typically profiled in the mainstream. As this plan started to gain momentum, Watson bumped into one of his former colleagues at Goldman Sachs, financial analyst Samir Rao. Watson and Rao reconnected immediately, and their conversation eventually turned to Watson and his mom's thoughts on a reimagining of digital news and information. Over several more conversations, Watson and Rao circled in on a multi-platform digital media company that would deliver forward-thinking and largely ignored news and content to an underserved generation of media consumers: educated, discerning, globally minded, and diverse. In those conversations, Watson and Rao conceived of and formed the basis for OZY. With the emotional and financial support of Watson's own close-knit family and their own personal investments, Watson and Rao set out to establish the visionary media company they had conceived.

30. Next, Watson focused on who his ideal financial partners would be for his vision. The name that immediately came to mind was his old business partner in the college prep space, Laurene Powell Jobs. Powell Jobs—a graduate of Wharton and Stanford Business School and a rising entrepreneur and financial strategist—shared Watson's vision to help disadvantaged young people find their paths to success, and had teamed up with him to form two such organizations: College Track, a pioneering nonprofit that helped high school students prepare for college, and Achieva College Prep Services, a company Watson later sold to the Washington Post and Kaplan Inc. in 2002.

31. Watson first floated the idea of investing in his novel approach to media to Powell Jobs in 2012. Yet again, Powell Jobs saw almost immediately the power of Watson's idea and what OZY could be. Powell Jobs, through her own socially conscious investment firm, Emerson

Collective, became one of OZY's earliest supporters and investors. What's more, as they sat in her garden in Palo Alto, they brainstormed initial content, compelling partners, and the right team to make sure OZY took off.

32. Along with Powell Jobs, other major players in the media and tech investment space jumped on board and invested in OZY. Before the end of the summer in 2013, OZY had investment commitments from legendary investor Michael Moe, veteran Silicon Valley law firm principal Larry Sonsini, Google Chief Legal Officer Dave Drummond, and Chegg CEO Dan Rosensweig, in addition to Powell Jobs's Emerson Collective.

II. 2013-2019: OZY Launches its Multi-Platform Media Business Focused on Delivering Premium Content to Millions of People, and Secures Substantial Funding from Prominent Investors, a Roster of Major Advertisers, and Content Partnerships with the Media Establishment.

33. In September 2013, OZY officially launched. It promised its audience that it would profile and deliver "the new and the next" in politics, business, foreign and national affairs, technology, arts and culture; meaning that OZY's audience should expect cutting-edge stories that the mainstream media failed to cover, such as profiles of the next rising stars, videos about the next hot trends, interviews with high-profile politicians about leading issues of the day, and stories that presented all sides of various issues. From early profiles of Alexandria Ocasio-Cortez to Trevor Noah to Aaron Judge to Amanda Gorman, OZY delivered "the new and the next."

34. When it launched, OZY had just over a dozen full- and part-time employees and freelancers to implement Watson and Rao's vision. In addition to transforming the media landscape, Watson also made it OZY's mission to become the most diverse media company in existence. It more than accomplished this goal, hiring nearly 1,000 people—90% of whom were women or people of color—over the years and bringing in different views and perspectives across all divides.

35. With its diverse team in place, OZY set out to build up its innovative media model: creating multiple digital and live platforms and distribution channels to disseminate its content; developing and publishing cutting-edge and riveting interviews, reports, videos, podcasts, and award showcases; and finding new and innovative ways to reach and impact media consumers looking for news free of polarizing blinders.

36. **Subscription Email Newsletters**. Along with its website, OZY's launch began with the idea of reaching out to and directly engaging with a target audience using tailored email newsletters. OZY developed specific strategies for using newsletters to reach target demographics with specific content its research showed its audience craved.

37. OZY's newsletters included daily newsletters featuring the breaking news of the day in politics, technology, foreign affairs, and pop culture, and weekly newsletters focusing on more long-form pieces, trends, and lifestyle content. OZY also regularly featured "guest editors" in its newsletters—giving some of the most prominent figures in American culture the ability to "guest curate" newsletters to spotlight the issues and topics they thought were the most important and intriguing of the day. The first OZY "guest editor" was none other than Bill Gates. Ben Smith would be another.

38. As OZY succeeded in reaching more and more of its target audience with the type and style of news and information it wanted, OZY's research showed that more and more subscribers would come on board. And when they did, OZY sold advertising space in the newsletters, just like other media outlets did with TV or websites. Over the years, advertisers for OZY's newsletters included the likes of JPMorgan Chase, Target, Walmart, TikTok, Airbnb, and many others.

39. **Streaming TV, Cable TV, and Digital Videos**. Another critical piece of OZY's business model was the creation and dissemination of high-quality video content through both streaming and traditional TV channels, as well as the burgeoning online digital market.

40. One of OZY's first forays into video content was a November 2013 interview of former President Bill Clinton to discuss his thoughts and opinions about the rollout of the Affordable Care Act. The multi-part interview, conducted by Watson himself, garnered significant media coverage in its own right as a thought-provoking critique from the former President—a Democrat himself—of the rollout of his party's landmark legislation.

41. The Clinton interview was the first step that would ultimately lead to OZY's decision to invest significant time and resources into developing TV and other serial video content. From there, OZY would go on to partner with trusted TV networks and online digital distributors such as PBS, A&E, the BBC, the Oprah Winfrey Network (OWN), Hulu, and Amazon, as well as to pioneer the idea of using YouTube as a platform for premium (and not just user-generated) original content.

42. OZY quickly became synonymous with thought-provoking television and online video broadcasting. Beginning in 2016 with *The Contenders: 16 for '16*, OZY built out a robust TV and digital video portfolio that focused on real-world storytelling and bringing to light stories and issues most other media outlets ignored. Those included:

- *The Contenders*: OZY's first branded series aired by PBS, the BBC, and AppleTV profiling presidential candidates over the years across 16 episodes.
- *The Carlos Watson Show*: OZY's flagship talk show broadcast by Amazon and showcasing guests from President Barack Obama to cultural icon, TV star, and supermodel Heidi Klum.
- *Black Women OWN the Conversation*: a joint OZY-OWN TV series featuring intimate discussions between Black women from all walks of life about topics rarely discussed openly in public.

- *Breaking Big*: an interview series on PBS and Amazon featuring a dozen of the most talented and innovative individuals of the day recounting their most difficult, dramatic, and serendipitous turning points in their careers.

- *Defining Moments with OZY*: a series on Hulu featuring inspiring stories from celebrities, business leaders, and public figures discussing the "defining moments" of their careers.

- *Take on America*: a groundbreaking town hall series on PBS exploring the divers opinions of different Americans across the country.

- *The Campaigns that Made History*: a 2-hour special on the History Channel highlighting some of the most surprising and shocking political contests in U.S. history.

- *Third Rail with OZY*: a weekly 30-minute debate show hosted and moderated by Watson and aired by PBS.

- *Voices Magnified*: a joint OZY-A+E original shortform series spotlighting a wide range of people impacting change and overcoming challenges in their communities.



43. All told, OZY produced over a dozen original shows and series across nine networks and online providers. And in 2020, the "Motherhood" episode of its groundbreaking series, *Black Women OWN the Conversation*, won an Emmy for Outstanding News Discussion and Analysis.

44. **Podcasts**. Parallel to OZY's growth in the TV and digital broadcasting space was OZY's development and distribution of original podcasts. OZY again established critical partnerships with other media companies, distributors, and even corporations to develop podcast series on the most relevant and critical issues of the day.

45. For example, OZY partnered with iHeartRadio for the long-running podcast series, *The Thread*, which explored a wide range of history's interlocking lives and events. In partnership with Ford Motor Company, Ozy created and released the *The Future of X: Mobility*, a podcast that explored the industries and domains that will shape the world in 50 years. And OZY partnered with the BBC for a podcast featuring Watson and journalist Katty Kay titled, *When Katty Met Carlos*. All told, OZY produced and distributed 10 original podcasts, hundreds of episodes, and millions of downloads. Five of OZY's first 10 podcasts would crack Apple's Top 100, and two—*The Thread* and *Flashback*—cracked the Top 10.



46. **OZY Fest**. Unique to OZY was its understanding of the power of bringing people together—literally—for live, in-person events. Thus, in 2016 OZY Fest was born, an annual music

and ideas festival in New York City's Central Park that featured an incredibly diverse set of presenters and performers across all political, social, racial, ethnic, and cultural spectrums.

47. OZY Fest attracted thousands of in-person attendees to the Central Park festival and millions more online. It featured speakers like Malcolm Gladwell, Mark Cuban, and Hillary Clinton, musicians like Common, H.E.R., Andra Day, and John Legend, top tier culinary figures like Eddie Huang, Padma Lakshmi, Alex Guernescelli, and Marcus Samuelsson, comedians like Chelsea Handler, Issa Rae, Trevor Noah, and Michael Che, literary figures like Salman Rushdie, Adam Grant, and Roxane Gay, athletes and entrepreneurs like Alex Rodriguez, Jillian Michaels, and Tony Gonzalez, and many others.



48. Before OZY Fest 2019 was cancelled by New York City Mayor Bill de Blasio because of heat concerns, between tickets sold and given away to teachers, students, and first responders, OZY expected over 100,000 attendees from more than 40 countries. In fact, before Mayor de Blasio's decision, New York City had agreed to move OZY Fest to the iconic Great Lawn in Central Park for two days to accommodate the expected masses.

49. **OZY Genius Awards**. Inspired by Carlos's mother, longtime teacher Dr. Rose Watson, in 2015 OZY debuted The OZY Genius Awards, a program that identified and supported

the next generation of thought leaders. During the five installments of the Awards, OZY awarded 50 "Geniuses" from colleges and campuses around the U.S. with up to $10,000 each so that they could pursue specific projects they identified during the application process.

50. Sponsors and partners for The OZY Genius Awards included AT&T, JPMorgan Chase, Discover, and GM. Judges included former Today Show anchor Katie Couric, Laurene Powell Jobs, JPMorgan executive Kristen Lemkau, and former NPR chief Jarl Mohn. Notably, acclaimed poet and 2021 presidential inauguration presenter Amanda Gorman won an OZY Genius Award in 2017.

A. OZY expands its reach from a few thousand of Watson's friends and family to more than 50 million people.

51. When OZY first launched in 2013, its newsletters went out to just a few thousand of Watson's and Rao's friends and family. But by 2016, as it began launching its TV, podcast, and live event strategies, OZY's total audience was already approaching 20 million, with over a million email newsletter subscribers. By 2019, OZY's subscription newsletter list had grown to over 5 million subscribers, with a core open rate of 25%—more than 2.5 times the industry standard. And by 2021, that list would be over 26 million.

52. All told between its premium TV & digital video content, leading podcasts, social media accounts, website, festival attendees, and subscription email newsletters, by 2019 OZY was reaching more than 50 million people. And by 2021, that number would exceed 70 million.

B. OZY's success and unique media business model garners interest from blue-chip advertisers, generates expectation-exceeding revenue, and attracts more and more investors and capital raises.

53. In December 2013, OZY officially announced that it had secured its Series A financing: approximately $7 million from the same investors who had committed their support before the September launch, including Emerson Collective and Michael Moe's GSV Holdings.

Powell Jobs's commitment went beyond financial; she was also one of OZY's board members from the beginning.

54. By October 2014, German media conglomerate Axel Springer became OZY's largest investor, investing $20 million in OZY.[14] Just like with Powell Jobs, Axel Springer committed more than just money; its CEO, Mathias Döpfner, joined OZY's Board of Directors.

55. In January 2017, OZY raised another $10 million in an initial Series C financing, again led by Moe and GSV, and by the end of the year had generated more than $12 million in gross revenue from advertising across its multiple platforms.

56. In 2019, OZY generated more than $30 million based on advertising sales from companies that included Discover, iHeartMedia, JPMorgan Chase, Netflix, Goldman Sachs, Salesforce, and Microsoft.

57. That September, OZY closed the final part of its Series C financing round. The full Series C round totaled $35 million and was led by Avenue Capital Group founder and co-owner of the NBA's Milwaukee Bucks, Marc Lasry. Lasry likewise agreed to not only serve on the Board of OZY, but to become OZY's Chairman.

58. It also included another key investor: Powell Jobs's Emerson Collective committed more than $12 million, bringing its total investment in OZY to approximately $20 million.

59. After less than six years, OZY was on the cusp of profitability, and projected a $9 million profit in 2020 and over $40 million in 2022 before COVID struck. OZY's conservative internal valuation range was $225 to $300 million.

[14] Roger Yu, *Axel Springer invests $20M in startup Ozy*, USA Today (Oct. 6, 2014), https://www.usatoday.com/story/money/business/2014/10/06/axel-springer-investment-in-ozy/16764657/.

III. Once the Darling of New Digital Media, BuzzFeed Begins to Spiral Just as OZY Rises.

60. Founded in 2006—more than seven years before OZY—by then-Huffington Post employees Jonah Peretti and John S. Johnson III, BuzzFeed began as a niche website focused on viral content such as online quizzes, "listicles," and sending out and posting links to other websites' popular content.

61. After five years of operating a website that focused on pushing viral content rather than substance, Peretti and BuzzFeed decided to expand the website to include long-form journalism and, they hoped, real reporting. To that end, BuzzFeed hired then Politico writer Ben Smith as the editor-in-chief of what it would eventually dub BuzzFeed News. At some point during his almost decade-long tenure at BuzzFeed, Ben Smith obtained a significant equity stake in BuzzFeed.

62. BuzzFeed presented itself to venture capital investors as a flourishing enterprise, attracting an $850 million valuation from venture capitalists Andreesen Horowitz and others in 2014. By 2016, NBCUniversal had invested $400 million into the company, taking a roughly 1/3 stake in BuzzFeed, and BuzzFeed formally expanded its business into separate divisions: BuzzFeed News and BuzzFeed Entertainment Group. And by 2017, BuzzFeed boasted 1700 employees worldwide.

63. The next year, however, cracks in BuzzFeed's business model began to show. In 2017, BuzzFeed had a "$50 million to $70 million shortfall"[15] and in November it announced that it would cut its U.S. staff by 8% across the board to address its "significant revenue shortfall."[16]

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[15] Amol Sharma & Lukas I. Alpert, *BuzzFeed Set to Miss Revenue Target, Signaling Turbulence in Media*, Wall St. J. (Nov. 16, 2017), https://www.wsj.com/articles/buzzfeed-set-to-miss-revenue-target-signaling-turbulence-in-media-1510861771.

[16] Lukas I. Alpert, *BuzzFeed Plans Job Cuts, Business Reorganization After Revenue Miss*, Wall St. J. (Nov. 29, 2017), https://www.wsj.com/articles/buzzfeed-plans-job-cuts-business-reorganization-after-revenue-miss-1511972228.

64. In 2018, while BuzzFeed would claim $307 million in revenue, it had "spent $386 million to make it, for a loss of more than $78 million"—in part because BuzzFeed paid social media companies like Facebook to "distribute [its] branded posts."[17] That September, BuzzFeed had also shut down its in-house podcast team, to try and develop its own original shows.[18]

65. The irony of BuzzFeed's paying for the distribution of its content on social media was that in December 2017, BuzzFeed had published a scathing article attacking its upstart competitor, OZY, for spending a few thousand dollars to generate interest and traffic for its branded content through paid placement.[19] What Smith and his news team decried as "fraudulent" was in fact eerily similar to what his own company committed to doing the very next year on a grander scale.

66. In January 2019, BuzzFeed announced another round of layoffs, letting go nearly 20% of its newsroom, which was just the beginning of a "planned 15 percent reduction of the overall work force at BuzzFeed."[20] BuzzFeed would again fail to make a profit in 2019.

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[17] Traffic at 279.

[18] Benjamin Mullin, *BuzzFeed News Cuts Podcasting Team to Focus on Video*, Wall St. J. (Sept. 19, 2018), https://www.wsj.com/articles/buzzfeed-news-cuts-podcasting-team-to-focus-on-video-1537369455.

[19] Craig Silverman, *A Bunch Of Digital Publishers Bought Cheap Traffic And Later Found Out It Was Fraudulent*, BuzzFeed News (Dec. 27, 2017), https://www.buzzfeednews.com/article/craigsilverman/these-publishers-bought-millions-of-website-visits-they.

[20] Jaclyn Peiser, *BuzzFeed's First Round of Layoffs Puts an End to Its National News Desk*, N.Y. Times (Jan. 25, 2019), https://www.nytimes.com/2019/01/25/business/media/buzzfeed-layoffs.html.

IV. Desperate to Catch OZY's Lightning in a Bottle, BuzzFeed Initiates and Engages in Discussions with Watson to Acquire OZY.

67. When BuzzFeed first began to sputter, Peretti tried to sell off pieces of BuzzFeed, specifically Ben Smith's BuzzFeed News. His ideal buyer was none other than Powell Jobs and Emerson Collective.[21] As former New York Times Executive Editor Jill Abramson recounted:

> Peter Lattman saw the numbers. He was the top media adviser to Laurene Powell Jobs … whose business, the Emerson Collective, had acquired The Atlantic. Jobs had considered other media ventures too, and Lattman, who had once directed media coverage for the *New York Times*, knew Smith fairly well. BuzzFeed's news operation, which Peretti had spun off into a separate division, might be an interesting investment, either as a minority stake or an outright purchase, if Peretti wanted to dump his unprofitable and large, 300-plus employee news operation. Since it was costly and the advertising picture was growing darker and darker, the news division would probably go for a song if Peretti was interested.
>
> . . .
>
> Soon Lattman and Smith were meeting in the bar at the hip Nomad Hotel, not far from Lattman's office in the tech heart of Manhattan, Madison Park. The talks were noncommittal. Peretti had come to believe deeply in the mission of BuzzFeed News and liked the prestige it brought his brand. It had up-classed BuzzFeed, and if and when digital advertising bounced back, the company would be poised to benefit. Word of the Lattman-Smith tete-a-tete reached the press, possibly through Ken Lerer [BuzzFeed's Chairman], who was connected to almost everyone in the media business. Rumors of a Jobs acquisition spread quickly, but nothing came of them.[22]

[21] *Merchants of Truth* at 343-44; *see also* Matthew Garrahan & Shannon Bond, *BuzzFeed News in Talks with Powell Jobs Group*, Financial Times (Feb. 1, 2018), https://www.ft.com/content/3d5d892c-0778-11e8-9650-9c0ad2d7c5b5.
[22] *Id.*

68. With Powell Jobs and Emerson Collective unwilling to save BuzzFeed, Peretti turned to another "big idea to revive BuzzFeed's fortunes"—"a series of mergers with five or six top internet publishers."[23]

69. But that too fell through when, in November 2018, a merger with Group Nine Media, a collection of new media properties including The Dodo, Thrillist, Seeker, and NowThisNews, collapsed because the "companies could never agree on a price, or on who, exactly, would run the merged thing."[24] The deal's collapse caused BuzzFeed Board Member Kenneth Lerer to resign and left Peretti "without a powerful ally" on BuzzFeed's Board and in a state of "desperation."[25] Enter Carlos Watson and OZY.

A. "Let's Do This!" Ben Smith Introduces Watson to Peretti, and After Meeting Watson and Seeing Preliminary Information About the Company, Peretti Falls in Love with OZY.

70. In August 2019, Ben Smith reached out directly to Watson, and over breakfast in New York, the two talked about their mutual admiration for one another and the future of digital media, and more importantly, Smith took Watson's temperature on a willingness to sell his company.

71. Watson was hesitant to give up the company he had poured his blood, sweat, and tears—not to mention his and his family's hard-earned money—into for the previous seven years. But he was also intrigued by the prospect of what more resources and an already established website platform could do to help OZY grow. So Watson agreed to hear Smith, Peretti, and BuzzFeed out.

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[23] Edmund Lee, *Founder's Big Idea to Revive BuzzFeed's Fortunes? A Merger With Rivals*, N.Y. Times (Nov. 19, 2018), https://www.nytimes.com/2018/11/19/business/media/buzzfeed-jonah-peretti-mergers.html?module=inline.
[24] Traffic at 283.
[25] Traffic at 283-84.

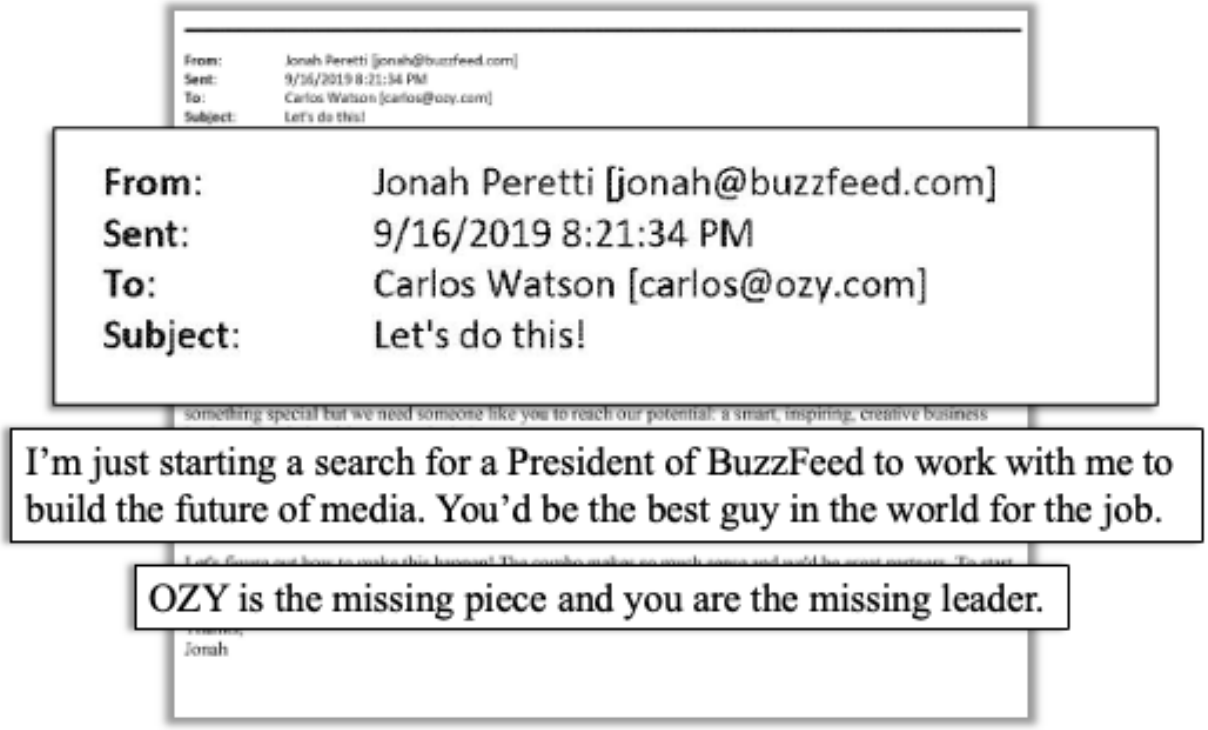
72. On August 28, 2019, Ben Smith emailed Watson and Peretti to connect them because he felt like they would "have a lot to talk about." Peretti responded:

> Carlos! Would love to take you to lunch. I'm a big fan of what you are building and smart, interesting people keeping saying you are amazing and I should meet you. Let me know what works for you. - Jonah

73. Watson and Peretti met the first week of September, and the conversation immediately turned to BuzzFeed's desire to acquire OZY. The two agreed to move forward with more formal acquisition discussions, and by September 7, they had a "Gentleman's Agreement" with a promise from Peretti for an NDA to follow for OZY to begin sharing some of its confidential and proprietary information.

74. The first thing Watson shared with Peretti were OZY's strategies and "key notes guiding how we think about our TV business." One specific OZY "process" Watson alluded to with Peretti under this "Gentleman's Agreement" was that OZY had developed "show ideas" based on its "data on what video series or podcast series perform well–and therefore can be converted into successful TV shows"—which reduces a network-partner's risk because of OZY's "in-built digital audience." But Watson would of course not divulge the specifics of such a process or the referenced data without a firm NDA in place.

75. On September 16, 2019, Peretti emailed Watson with the subject line: "Let's do this!" In the email, not only did Peretti exclaim his excitement for "joining forces with" Watson and OZY, but he lauded OZY for having a "premium brand, a next level festival, a burgeoning TV studio." But that's not all; Peretti also notified Watson he was in the market for a "President of BuzzFeed" and that Watson himself was "the best guy in the world for the job" and BuzzFeed's "missing leader." Peretti ended the email by promising again that BuzzFeed's general counsel would "send over an NDA so we can go deeper."



September 16, 2019 Email from J. Peretti to C. Watson

B. OZY had long-established security measures in place to protect and keep its trade secrets confidential.

76. For years, OZY knew and understood the significant value of the information, processes, strategies, and finances it had developed about how it generated revenue from its multiple platforms, its detailed strategies and "tip sheets" for pitching and securing specific investors and advertisers, its unique process for identifying and producing its award-winning and popular content, and its confidential investor, advertiser, and consumer lists. And OZY had taken significant precautions and steps to ensure the confidentiality of that information.

77. First, OZY employees signed individual confidentiality agreements, which required employees to hold OZY's information "in the strictest confidence," "to take all reasonable precautions to prevent any unauthorized use or disclosure of Company Confidential Information," and not "to use the Company Confidential Information" for any purpose whatsoever other than for the benefit of the Company." That information specifically included (but was not limited to):

> any and all non-public information that relates to the actual or anticipated business and/or products, research or development of the Company, or to the Company's technical data, trade secrets, or know-how, including, but not limited to, research, product plans, or other information regarding the Company's products or services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company on which I called or with which I may become acquainted during the term of my employment), software, developments, inventions, discoveries, ideas, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, and other business information disclosed by the Company either directly or indirectly in writing, orally or by drawings or inspection of premises, parts, equipment, or other Company property.

Those obligations extended beyond the end of employment.

78. In addition to this general restriction across the company, OZY also closely restricted access to its trade secrets to only certain 'need-to-know' employees and even then, utilized password-protected systems to house the information. For example, OZY used platforms such as SailThru and Campaigner to collect and store granular data about OZY's daily newsletter operations, such as how often a particular email was opened, the identities of the subscribers, number of daily sends and opens, analyses of which subject lines performed best, and which advertisements were clicked on and how often. That information was also restricted to a select-few employees at OZY, which included Watson, Rao, and the heads of marketing, technology, and editorial.

79. Another example of highly confidential information OZY kept closely guarded in password-protected systems was its granular data related to advertising revenue for its various platforms: newsletters, TV, digital videos, social media, podcasts, and OZY Fest. That information was stored in the financial software NetSuite and, for some information, in a specific Sales Tracker document. Access to that information was likewise specifically restricted to Watson, Rao, OZY's CFO and members of the finance team, and OZY's Chief of Staff.

80. Moreover, OZY never shared any such information outside of the company without an NDA or agreement to maintain confidentiality. And even then, it shared such information only with select third parties as needed, such as likely investors and advertisers, or when a serious acquisition offer was on the horizon.

C. BuzzFeed and OZY sign a mutual nondisclosure agreement, which forbids either company—or any of its employees—to disclose or "use in any way whatsoever" the information shared during the acquisition.

81. BuzzFeed followed through on its promise to agree to a mutual nondisclosure agreement ("Mutual NDA").[26]

82. The Mutual NDA was signed by both BuzzFeed and OZY on September 23, 2019. In addition to BuzzFeed agreeing in no uncertain terms to hold OZY's Proprietary Information in confidence, it agreed "not to make use whatsoever at any time of such Proprietary Information" other than for purposes of the acquisition itself, and "not to copy or reverse engineer any such Proprietary Information." Importantly, the Mutual NDA restricted access to the shared Proprietary Information to only "employees, affiliates and agents who have a need to know for the permitted purpose and who are apprised of and have agreed to the confidential nature of the Proprietary Information and all of the restrictions" in the Mutual NDA, and likewise made the parties "responsible for any breach of confidentiality by its respective employees and agents."

[26] Exhibit A.

BuzzFeed

MUTUAL NONDISCLOSURE AGREEMENT

1. The Receiving Party agrees (i) to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its confidential materials), (ii) not to divulge any such Proprietary Information or any information derived therefrom to any third person other than Receiving Party's employees, affiliates and agents who have a need to know for the permitted purpose and who are apprised of and have agreed to the confidential nature of the Proprietary Information and all of the restrictions in this Agreement, (iii) not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally its relationship with the Disclosing Party, and (iv) not to copy or reverse engineer any such Proprietary Information. Each party shall be responsible for any breach of confidentiality by its respective employees and agents. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (b) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party without restriction, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who have had no access to such information.

September 23, 2019 Executed Mutual NonDisclosure Agreement Between BuzzFeed, Inc. and OZY Media Inc.

83. Not only did the Mutual NDA confirm and foresee that the information BuzzFeed and OZY expected to share would be proprietary and confidential, but that it would be the other party's literal "trade secrets." To that end, BuzzFeed and OZY specifically contemplated that a breach of the Mutual NDA would give rise to a violation of the Defend Trade Secrets Act of 2016 and included a provision in the Agreement whereby a disclosure to law enforcement or as part of a legal proceeding would not constitute such a violation—and therefore that any other breach naturally would.

7. **Notice of Immunity Under the Defend Trade Secrets Act of 2016 ("DTSA"), 18 U.S.C. § 1833(b).** Notwithstanding the obligations listed above, the Receiving Party is aware that the Receiving Party shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

September 23, 2019 Executed Mutual NonDisclosure Agreement Between BuzzFeed, Inc. and OZY Media Inc

84. Neither party has notified the other party of its termination of the Mutual NDA and therefore, pursuant to Section 4, the Mutual NDA remains in effect today.

D. BuzzFeed and Ben Smith get a months-long look under the hood of OZY, and like what they see.

85. Once BuzzFeed had agreed to the Mutual NDA and to the consequences of it or any of its employees using or disclosing any of OZY's trade secrets outside the scope of the acquisition, terabytes of valuable information began flowing from OZY to BuzzFeed.

86. Beginning with a slide deck giving an overview of OZY's business model, finances, revenue, current and future TV and podcast slate, and a breakdown of OZY Fest shared on September 26 and extending through January 2020, OZY and its executive team gave BuzzFeed's executive team—Peretti and Ben Smith included—unprecedented access to OZY's inner workings. OZY shared specific documents and met repeatedly with BuzzFeed's finance, marketing, and editorial teams to detail and outline all of OZY's strategies for developing its TV, video, and podcast content, generating revenue from advertisers across all of its platforms and offerings, operating successful live events, pitching and securing investments from some of the most coveted media investors in the world, and OZY's future prospects and opportunities. The specific documents and information expressly shared with Peretti, Smith, and others were:

- OZY Studio's Deals Playbook, a 17-page guide for building a successful TV studio and original video content business, including specific and detailed "deal terms," licensing strategies, revenue splits, advertisers for each of OZY's TV shows, and OZY's specific phased approach to TV and video expansion;

- OZY's strategy guides and operating procedures for its subscription email newsletters and OZY Fest, including its detailed breakdowns for pitching and securing advertisers and generating revenue for such platforms, strategies and analysis for generating email "opens" for newsletters, and procedures for using events like OZY Fest to bolster and promote OZY's other digital, video, podcast, and newsletter platforms;

- Pitch sheets and investment memos with detailed strategies and tips for courting specific advertisers and investors, including Powell Jobs and Emerson Collective (and their affiliates and partners) and Axel Springer (and their affiliates and partners); and premium advertisers including JPMorgan Chase, Discover Financial, and Walmart;

- OZY's Finance/Sales/Audience Spreadsheet, which included detailed breakdowns and itemizations of OZY's revenue sources and streams, its specific revenue from each advertiser and for each individual platform, and audience metrics; and

- OZY's Valuation Analysis, which included ways OZY calculated the value of premium content and access to multiple platforms for revenue generation;

87. In addition to specific documents, more than a dozen senior BuzzFeed leaders across finance, marketing, and editorial teams met with OZY's counterparts repeatedly and throughout the process, including several calls and in-person meetings between October 6 and October 18, 2019. In these meetings, OZY employees shared detailed information regarding OZY's revenue, assets, and obligations; past, current, and proposed products and content; investor and advertiser lists; growth strategies; and audience and reach metrics, data, and projections.

88. Following almost two months of information sharing between OZY and BuzzFeed, BuzzFeed began preparing a joint final analysis and pitch deck during the first half of November. After contributions from both sides for more than a month, BuzzFeed shared the last version of the analysis deck, titled "BuzzFeed + OZY: Media for a New Era," with the acquisition teams.

89. In addition to overviews about BuzzFeed's business and BuzzFeed's vision for what a joint OZY-BuzzFeed union would look like, the deck included summaries and conclusions of OZY's legitimacy and viability, built from the Proprietary Information OZY had shared during the acquisition process. Specifically, the deck highlighted and confirmed BuzzFeed's understanding that OZY's monthly audience and reach metrics (then 50 million monthly users), revenue projections, and revenue streams were absolutely real.

90. And finally, the December 23 deck confirmed, at the very end, that indeed any acquisition of OZY would install Watson as the new venture's President.

E. Buzzfeed reveals a second motivation for initiating acquisition talks: enlisting Watson's help and insight into how to get Laurene Powell Jobs and Emerson Collective to invest in BuzzFeed.

91. While BuzzFeed and OZY engaged in detailed information sharing and acquisition talks, Peretti and Smith likewise set their sights on OZY's first and perhaps most important partner: Laurene Powell Jobs, who Peretti had dispatched Smith to secure the year before, to no avail.

92. Ben Smith admitted this in his 2023 book Traffic. In discussing Peretti's interest in acquiring OZY, Smith wrote:

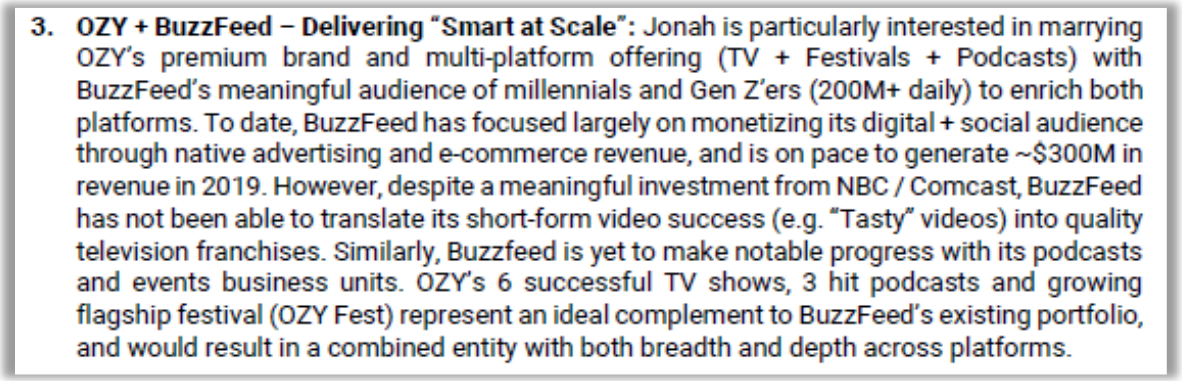
> Ozy could be the solution to all of Jonah's problems. **In this fantasy, Powell Jobs could buy out the rest of BuzzFeed's board and invest in the company at a valuation inflated enough that it would be easy for BuzzFeed, in turn, to buy Ozy for her.** Jonah would be rid of the restless board members, and he'd have a new, Black Jon Steinberg on the board at a moment when media companies were increasingly sensitive to their lack of diversity.[27]

93. After signing the Mutual NDA, Watson and Peretti discussed Powell Jobs's investments and role in OZY, and what her and Emerson's involvement in a joint venture might look like. They agreed to engage her directly and bring her into discussions. On October 1, 2019, Watson sent Powell Jobs a 10-page memorandum entitled "Opportunity Summary," which laid out the joint OZY-BuzzFeed venture.

94. Among other detailed observations about what OZY brought to the table, the investment memo acknowledged that BuzzFeed had struggled to develop premium content or to make progress at video production or events, in contrast to OZY: "[D]espite a meaningful investment from NBC / Comcast, BuzzFeed has not been able to translate its short-form video

[27] *Traffic* at 279.

success (e.g. 'Tasty' videos) into quality television franchises. Similarly, BuzzFeed is yet to make notable progress with its podcasts and events business units."



3. **OZY + BuzzFeed – Delivering "Smart at Scale":** Jonah is particularly interested in marrying OZY's premium brand and multi-platform offering (TV + Festivals + Podcasts) with BuzzFeed's meaningful audience of millennials and Gen Z'ers (200M+ daily) to enrich both platforms. To date, BuzzFeed has focused largely on monetizing its digital + social audience through native advertising and e-commerce revenue, and is on pace to generate ~$300M in revenue in 2019. However, despite a meaningful investment from NBC / Comcast, BuzzFeed has not been able to translate its short-form video success (e.g. "Tasty" videos) into quality television franchises. Similarly, Buzzfeed is yet to make notable progress with its podcasts and events business units. OZY's 6 successful TV shows, 3 hit podcasts and growing flagship festival (OZY Fest) represent an ideal complement to BuzzFeed's existing portfolio, and would result in a combined entity with both breadth and depth across platforms.

October 1, 2019 "Opportunity Summary" Investment Memorandum

95. A meeting was scheduled between Watson, Peretti, and Powell Jobs in Los Angeles for the next day, October 2.

96. Before the October 2 meeting, Watson prepped Peretti for the meeting, advising him exactly on what was most important to Powell Jobs and what she would want to hear about any media venture and investment. Thereafter, the meeting went very well, and Powell Jobs and Watson communicated afterwards about next steps, which included upcoming meetings with Ben Smith specifically about the acquisition.

97. At the end of October, Peretti emailed Watson directly with his "absolute dream" scenario:

> "you and Laurene joining the board and becoming my partners. And we'd have all the right ingredients to win the future - leadership, capital, scale, diversification, influence, the works!"

98. Powell Jobs, Watson, and Peretti would meet yet again—almost four months later during the very end of the acquisition process—to discuss how Peretti could bring Powell Jobs into the fold. While the meeting was again fruitful, OZY's decision to turn down BuzzFeed's final offer rendered the conversations moot—at least from OZY's perspective.

F. BuzzFeed makes multiple offers to acquire OZY, each more lucrative than the last, culminating in a $250 million offer plus $30 million in incentives and the position of President of BuzzFeed for Watson—but Watson and OZY decline.

99. From the moment Peretti sent Watson his September 16 "Let's Do This!" email, Watson expected to receive serious acquisition offers from BuzzFeed. And he did.

100. All told, between October 2019 and January 2020, BuzzFeed made five separate concrete offers to acquire OZY, with the final offer more than doubling its initial offer of $125 million. BuzzFeed's final offer to Watson and OZY included a $250 million purchase price, $30 million in earn-out incentives personally for Watson, and, as had been discussed throughout, the position of President for Watson, along with a position on the new venture's Board of Directors.

101. After several calls between Watson and Peretti in late December 2019 and early January 2020, Watson officially notified Peretti during a phone call on January 16 that OZY was respectfully declining BuzzFeed's offer.

102. Nevertheless, over the next two weeks, Peretti continued to try and change Watson's mind, including during a breakfast meeting on January 30 following their final meeting with Powell Jobs. And when Watson again respectfully declined, Peretti specifically and intentionally kept the door open for future discussions about how OZY and BuzzFeed could still "partner" in the future, including discussions about a joint OZY-BuzzFeed partnership for OZY Fest.

G. Ben Smith plays a central role throughout the acquisition process, which includes access to all of OZY's trade secrets—before abruptly resigning in January 2020 in the final days of the acquisition talks.

103. Beginning with his literal brokering and introduction of the idea, Ben Smith's involvement in the acquisition was critical and central. Not only did he gain access to all of the shared information between the parties, but he also took a leading role discussing what a potential

acquisition and joint venture would look like and hammering out what each side could bring to the table given his review of OZY's Proprietary Information.

104. For example, on October 3, 2019, Smith asked Peretti to set up a meeting with Watson. Peretti agreed that it was a good idea, particularly because he saw BuzzFeed News as "the trickiest thing to manage in a combo because we are both hyped about the possibilities for the election and the work we are doing." Smith responded with concern and that he and Peretti had to "get on the same page" about the venture.

105. On October 8, Smith and Watson met for breakfast in New York. During that meeting, they discussed Smith's understanding of OZY's events business, advertising and licensing contracts, and revenue streams. Smith was particularly focused on OZY's success in the festival business, and how OZY had built scaled in-person events like OZY Fest into a brand differentiator and significant revenue generator. He also noticed specifically that he and BuzzFeed could not figure out how to successfully create and operate festivals or events, let alone derive significant revenue from them.

106. After the meeting, Smith reported back to Peretti that the meeting "was good" and that Watson had expressed "great ideas about ad sales and events" in particular.

107. A month later, Peretti again turned to Smith to communicate with Watson about the acquisition details, specifically about "2020 partnership and news," and "how to position to maximize investment interest from LPJ [Laurene Powell Jobs]." Watson and Smith thereafter discussed those specific topics, during which Watson gave further details about tips and strategies for pitching Powell Jobs, Emerson Collective, and others in her orbit on investing in multi-platform media companies.

108. Despite their cordial conversations and Smith's detailed interest in what OZY was doing and accomplishing behind-the-scenes with its festival business, advertising success, multi-platform audience beyond just digital, and multiple revenue streams, Watson sensed Smith's discomfort with the idea of a joint OZY-BuzzFeed venture. Smith seemed to have a particular difficulty with the idea that Watson would be made president of and a board member for the joint venture, and that Smith would have to answer to both Watson and Peretti.

109. Watson's senses were correct: on January 28, 2020, while Peretti was making his final plea to Watson to change his mind and accept BuzzFeed's offer, Ben Smith submitted his resignation from BuzzFeed, having accepted a job as a media columnist for The New York Times.

V. After Watson and OZY Decline BuzzFeed's Final Offer, OZY Goes Back to Delivering High-Quality Content to Its Ever-Growing Audience.

110. For the next year and a half, Watson's decision to turn down BuzzFeed's lucrative final offer appeared to have been wise, even in the face of the COVID-19 pandemic.

111. By September 2021, OZY had increased its annual monthly audience to over 70 million unique viewers. That included 7 million unique 'openers' of the subscription email newsletters each month out of the 26 million total subscribers.

112. From January 2020 to September 2021, OZY continued to deliver for its Fortune 100 advertisers, such as GM, JPMorgan Chase, Goldman Sachs, Walmart, Eli Lilly, and TikTok, exceeding engagement by 30% on average for the content associated with their brands. Several major advertisers and top ad agencies began to sign not just 7-figure, but significant 8 figure deals including advertising juggernauts WPP (home to Coke, Target, and Ford), Dentsu (home to P&G, Microsoft, and Facebook), and Omnicom (home to Pepsi, Nissan, and Disney).

113. OZY also continued to attract even more of the industry's most prominent investors. For example, in Fall 2020, Goldman Sachs, with several of its top executives already

investors in OZY and the firm itself an advertising client, kicked off a due diligence process to likewise invest in OZY. After several months doing a deep dive into OZY, Goldman struck a deal with OZY, signing a term sheet in January 2021 to invest $40 million in the company.

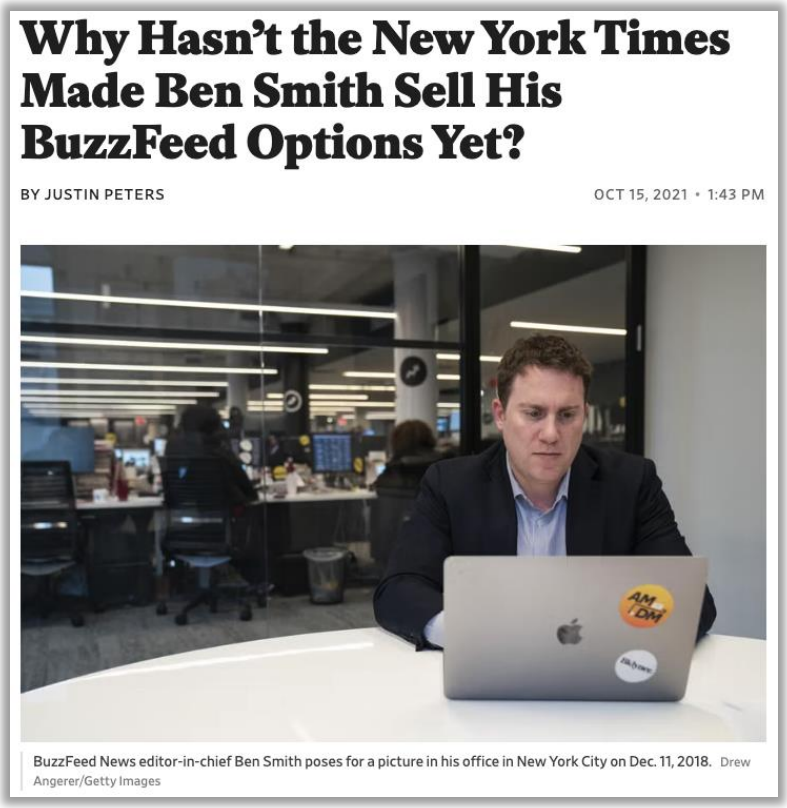
114. While that deal would ultimately fall through because of Rao's conduct (described below), Goldman continued a dialogue with Watson and OZY about additional investment and partnership opportunities, including signing two separate deals with OZY in mid-February and July, and engaging with OZY about another multi-million-dollar deal later that summer.

115. By Fall 2021, having survived and thrived through a year and a half of the devastating COVID-19 pandemic, OZY was geared up for yet another investment round—its Series E round. To manage it, OZY turned to JPMorgan Chase, which agreed to oversee the financing and previewed to OZY that it should expect a valuation of $2 billion for the round.

VI. Ben Smith Promises to Sell His Equity Interest in BuzzFeed, Reneges on That Promise, and By Fall 2021, Stands to Make Millions from BuzzFeed's IPO—Unless BuzzFeed Continues to Lose to Its Competitors.

116. From the moment he left BuzzFeed and joined The New York Times as a "media columnist," Ben Smith had been playing a dangerous game of conflicted reporting. Journalists and ethical commentators wondered out loud why The Times had not "made Ben Smith sell his BuzzFeed options yet," despite the fact that The Times had published at least a "half-dozen" reports that required Smith to disclose his stake in BuzzFeed to readers.[28]

[28] Justin Peters, *Why Hasn't the New York Times Made Ben Smith Sell His BuzzFeed Options Yet?*, Slate (Oct. 15, 2021), https://slate.com/business/2021/10/ben-smith-new-york-times-ozy-buzzfeed-spac.html.



Why Hasn't the New York Times Made Ben Smith Sell His BuzzFeed Options Yet?

BY JUSTIN PETERS OCT 15, 2021 • 1:43 PM

BuzzFeed News editor-in-chief Ben Smith poses for a picture in his office in New York City on Dec. 11, 2018. Drew Angerer/Getty Images

117. Moreover, Ben Smith knew he had an ethical obligation to get rid of his BuzzFeed stock options. He had publicly committed to doing so from his earliest days at The Times, stating in one article—wherein he criticized the NewsGuild union even though he had gone toe-to-toe with it the year before as part of BuzzFeed's management—that he "agreed to divest those options as quickly as [he] could, and certainly by the end of the year."[29] But 2020 came and went, and Ben Smith had done nothing to unload his BuzzFeed equity.

118. Then, in June 2021, BuzzFeed announced that it would go public via a special purpose acquisition company, or SPAC, to be "valued at $1.5 billion."[30] Of course, Smith still

[29] Ben Smith, *How a New Breed of Union Activists Is Changing the Rules (and Newsrooms)*, N.Y. Times (May 3, 2020), https://www.nytimes.com/2020/05/03/business/media/coronavirus-union-newsrooms.html.

[30] Edmund Lee, *BuzzFeed Confirms Plan to Go Public*, N.Y. Times (June 24, 2021), https://www.nytimes.com/2021/06/24/business/media/buzzfeed-merger-spac.html.

held his equity in BuzzFeed, and, by September 2021, Smith was months away from realizing the windfall from BuzzFeed's IPO.

VII. On the Cusp of OZY's $2 Billion Valuation, Watson Learns that Ben Smith Intends to Write a Take-Down Story About OZY Despite His Clear Conflict.

119. In September 2021, as OZY was nearing its Series E financing round, Watson heard that Ben Smith was working on a piece about OZY, specifically that Ben Smith had reached out to OZY COO Rao directly to talk. Watson had kept in touch with Smith after he left BuzzFeed, even having him on as a guest for OZY's The Carlos Watson Show in August 2020.

120. But Smith's September 2021 outreach was not collaborative; when Watson called Smith to ask what was going on, he did not answer, but rather responded with a short email noting that it was not yet appropriate to speak with Watson, and that Smith wasn't even sure he had a story to report yet. As it turns out, Smith was deep into writing a piece that would destroy OZY.

A. Watson reminds Ben Smith about the facts disproving his narrative about OZY, and of Smith's confidentiality obligations under the Mutual NDA.

121. On September 22, Ben Smith finally reached out to Watson, calling him to let him know that he was working on an article that would focus on an episode in which OZY co-founder and COO Samir Rao had impersonated a YouTube executive on a Goldman Sachs reference check earlier that year.

122. The next day, Smith sent Watson a list of questions revealing that Rao's conduct on the Goldman reference check was not, in fact, the only focus of Smith's story. Instead, Smith called into question the legitimacy of basic facts about OZY, demanding a granular accounting of how OZY arrived at 50 million monthly unique visitors and more than 20 million email newsletter subscribers. Ben Smith further demanded more information on OZY's premium television programs.

123. Watson responded within 24 hours and stated up front so there was no misunderstanding that his answers were completely "on the record."

124. Regarding the Goldman Sachs reference check, Watson responded, truthfully, that only Rao was on the reference check call. And further, with Rao's permission, Watson shared sensitive information with Smith about the root cause of the episode: Rao's mental health crisis.

125. Regarding Smith's other questions, Watson likewise responded with on-the-record facts about OZY:

- OZY's audience measure was not based on the outdated method of simply adding up unique website visitors, like a Comscore does. Instead, OZY measured its audience accurately across its multiple platforms, including OZY's "email newsletters, TV and OTT content, social media and podcasts." (Of course, Ben Smith knew this, having been privy to BuzzFeed's diligence of OZY.)

- OZY's audience, when accurately accounting for its many platforms and engagements, was as advertised: it comprised more than 25 million monthly consumers for TV, OTT, and podcasts, more than 30 million monthly on social media, and the 26 million email newsletter subscribers. (These numbers were in-line with the audience data that OZY provided to BuzzFeed and Smith.)

- OZY's premium talk show on YouTube—which had 200 million views its first year, more than any other premium daily talk show that OZY was able to identify—was now also streaming on Amazon.

126. Watson was deeply concerned that he had to explain the latter points about OZY's metrics and methods for calculating its audience. After all, Ben Smith knew all of this because he had seen, among other documents, OZY's Finance/Sales/Audience Spreadsheet, which delineated OZY's internal metrics, methodologies, and standards for measuring its audience. And of course, he and BuzzFeed had been satisfied with what they saw to the tune of offering more than $250 million to buy OZY.

127. Watson was shocked that Ben Smith would even report on OZY at all given the unprecedented access to OZY's trade secrets he had at BuzzFeed—and his strict obligations under the Mutual NDA.

128. On September 25, 2021 (Saturday), Watson texted, emailed, and called the Business Editor at The New York Times, Ellen Pollock. He alerted her to Ben Smith's confidentiality obligations and his obvious conflict of interest in reporting on these issues, both because he was heavily involved in acquisition talks for OZY and because he still held a large equity stake in OZY's competitor, BuzzFeed. Pollock's response was shocking: while she appreciated how serious the issue might be, she was outside of the city and could not dig into the issues before publication.

B. Ben Smith and The New York Times disregard the facts and publish their hit piece about OZY.

129. On Sunday, September 26, 2021, The New York Times published Ben Smith's article, "Goldman Sachs, Ozy Media and a $40 Million Conference Call Gone Wrong."[31] The article painted a knowingly false and devastating picture of OZY and Watson.

130. Ben Smith's article led with the Goldman Sachs call, implying (through the article's title no less), that the Goldman deal hinged on some sort of special relationship between OZY and YouTube, the subject of the reference check. Ben Smith's article also claimed that Watson himself was involved in Rao's conduct, sending out an email to Goldman for the call itself.

131. In fact, as Ben Smith well knew from his own participation in prior deals like the prospective OZY merger with BuzzFeed, reference checks are but one component in an extensive due diligence process. Goldman's process with OZY lasted months, and entailed reviews of OZY-

[31] Ben Smith, *Goldman Sachs, Ozy Media and a $40 Million Conference Call Gone Wrong*, N.Y. Times (Sept. 26, 2021), https://www.nytimes.com/2021/09/26/business/media/ozy-media-goldman-sachs.html.

provided data by outside accountants (Ernst & Young), lawyers (Sidley Austin LLP), tax advisers (also Ernst & Young), and cyber and IT consultants, as well as reference checks. Goldman had direct conversations with various investors, customers, and partners that OZY provided as references, including NBC, A&E, American Family Insurance, Sutter Rock Capital, Avenue Capital, and others.

132. Moreover, as Rao himself memorialized in a letter, "absurdly, stupidly, **without consulting anyone else**, I set up a reference call and tried to pass myself off as the reference." He went on:

> A few years ago I [was] diagnosed with a severe, untreated case of clinical depression, including being prone to bipolar / more extreme episodes.... In the week leading up to the [reference check] episode, I had a change in medication that didn't go well.... And what I experienced in the leadup to that fateful day, and what peaked on that day, can charitably be described as a mental breakdown, characterized by erratic behavior and meaningful mood swings that I tried to confine.

133. Tellingly, Ben Smith had failed to fact-check with Watson the false claim that Watson had set up the Goldman-YouTube reference check—had Ben Smith bothered to do so, Watson would have emphatically denied this claim as false.

134. Moreover, the call was old news to everyone at OZY and Goldman. The OZY Board was told about it right away, Watson had spoken to Goldman immediately to clear the air, and since the call, Goldman itself had reengaged with Watson and OZY for new partnerships and investments.

135. Beyond Smith's false characterization of the Goldman call, the truly devastating part about Smith's article was his narrative that OZY was, in essence, fake.

136. Smith downplayed the legitimacy of OZY's content, value, and numbers, despite having seen the data behind them while at BuzzFeed. He claimed that Comscore—"the best known

service" according to Ben Smith—couldn't account for OZY's 50-million claim. But Smith knew—not just from Watson's email a few days prior, but from BuzzFeed's due diligence in 2019—that OZY's multi-platform numbers were real and in fact a more accurate metric than Comscore's simple website-only datapoint. Nevertheless, Smith questioned OZY's statement that it had more than 20 million newsletter subscribers and completely omitted the numbers attributed to OZY's TV, podcasts, and social media audience.

137. By the end of the article, the only take away a reader could have was that, as Smith had inferred at the beginning, OZY was nothing short of the media's version of "Theranos."

C. Ben Smith falsely represents his central role in the BuzzFeed-OZY Acquisition Talks.

138. One piece of information that, had it been included in the article, would have caused readers to seriously question the accuracy of Ben Smith's narrative was the fact that just two years prior, Ben Smith had engaged in a deep dive into OZY's detailed financials, traffic metrics, and engagement and revenue strategies, and come out the other side ready to endorse an acquisition for almost $300 million.

139. Ben Smith disclosed none of this. What he and The Times included instead was the following inadequate and highly misleading disclaimer:

> (I was editor in chief of BuzzFeed News at the time of that article. Later, **I met Mr. Watson when I was peripherally involved in acquisition talks between the companies**. Mr. Watson told The Times he believed that it was unethical for me to write this column. Under New York Times policy, I can't write about BuzzFeed extensively until I divest stock options in the company, which I left last year.)[32]

[32] Ben Smith, *Goldman Sachs, Ozy Media and a $40 Million Conference Call Gone Wrong*, N.Y. Times (Sept. 26, 2021), https://www.nytimes.com/2021/09/26/business/media/ozy-media-goldman-sachs.html.

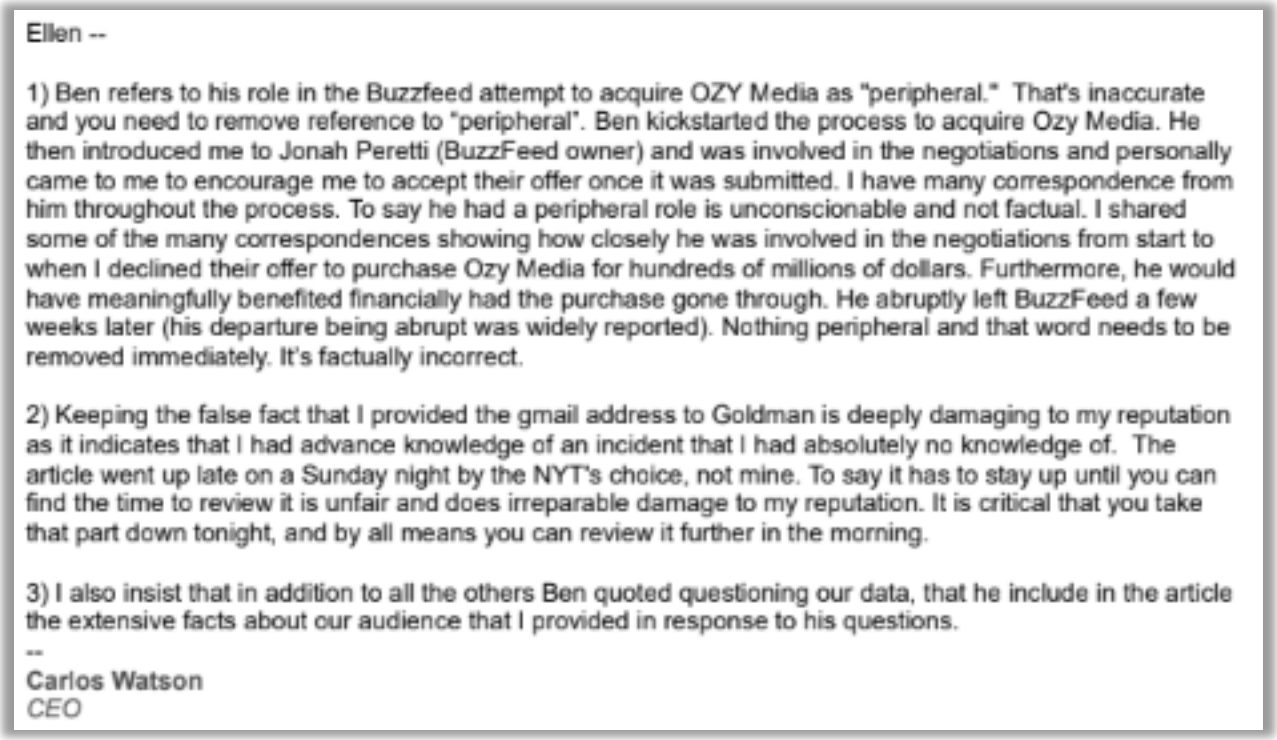
140. Ben Smith's purported disclaimer was even more diabolical and harmful to Watson and OZY than if he had said nothing, for two reasons. First, the vague reference to "acquisition talks" misstates the actual negotiations between BuzzFeed and OZY. BuzzFeed's courtship of OZY, and the detailed due diligence that unfolded over the course of five months and culminated in BuzzFeed's almost-$300 million offer, surely qualify as much more than mere "acquisition talks."

141. Second, and just as damaging, is the notion from Smith's disclaimer that he was outside of—"peripherally involved in"—the BuzzFeed-OZY merger process. In fact, Smith played a central role throughout the due diligence, as would be expected given his sizable financial stake in any future deal involving BuzzFeed. In addition to accessing OZY's documents, Smith: personally introduced Watson and Peretti, enabling Peretti to initiate merger discussions; communicated with Peretti about the latter's first joint-meeting with Powell Jobs; personally obtained details about OZY's operations from Watson, including and specifically its newsletter and event business; and strategized with Watson how to maximize investment interest from Powell Jobs and investors like her.

142. These twin mischaracterizations in Ben Smith's disclaimer cloaked his reporting with an air of disinterested objectivity, thereby lending his article more credibility. But in reality, Smith's so-called disclaimer concealed from his readers the truth: he was not a disinterested observer, but rather a highly conflicted journalist who had been a crucial participant in a prospective deal to acquire the very company about which he was now pretending to report objectively.

143. Lastly, Smith and The Times concealed from their readers that Smith was bound by the Mutual NDA, and that the information he was privy to was in fact OZY's trade secrets.

144. After the article was published, Watson again pleaded with Pollock to intervene and make at least three (3) edits to the article: (1) fix Ben Smith's knowingly false claim that he was only "peripheral" to the OZY-BuzzFeed acquisition; (2) fix the claim that Watson set up the reference check call, which he did not; and (3) fix the article's omission of the detailed metrics of OZY's audience, which Watson had provided to Smith before publication and, of course, which Smith already knew.



Ellen --

1) Ben refers to his role in the Buzzfeed attempt to acquire OZY Media as "peripheral." That's inaccurate and you need to remove reference to "peripheral". Ben kickstarted the process to acquire Ozy Media. He then introduced me to Jonah Peretti (BuzzFeed owner) and was involved in the negotiations and personally came to me to encourage me to accept their offer once it was submitted. I have many correspondence from him throughout the process. To say he had a peripheral role is unconscionable and not factual. I shared some of the many correspondences showing how closely he was involved in the negotiations from start to when I declined their offer to purchase Ozy Media for hundreds of millions of dollars. Furthermore, he would have meaningfully benefited financially had the purchase gone through. He abruptly left BuzzFeed a few weeks later (his departure being abrupt was widely reported). Nothing peripheral and that word needs to be removed immediately. It's factually incorrect.

2) Keeping the false fact that I provided the gmail address to Goldman is deeply damaging to my reputation as it indicates that I had advance knowledge of an incident that I had absolutely no knowledge of. The article went up late on a Sunday night by the NYT's choice, not mine. To say it has to stay up until you can find the time to review it is unfair and does irreparable damage to my reputation. It is critical that you take that part down tonight, and by all means you can review it further in the morning.

3) I also insist that in addition to all the others Ben quoted questioning our data, that he include in the article the extensive facts about our audience that I provided in response to his questions.

--
Carlos Watson
CEO

145. The New York Times eventually clarified that Watson did not set up the reference call, but the false claims about Ben Smith's role in the OZY-BuzzFeed acquisition and omission of OZY's full audience data have never been corrected.

D. Ben Smith's false claims cause a media firestorm; he publishes more articles attacking OZY, and goes on a victory tour for OZY's "downfall."

146. The reaction to Ben Smith's article was swift and devastating. Watson was forced to spend the next several days rallying his investors, advertisers, board members, and staff in an

attempt to weather the storm. But many other media outlets bought into Smith's knowingly false narrative, and the false claims about OZY's legitimacy spread like wildfire.

147. Nevertheless, OZY survived the first few days of Ben Smith's attack, thanks in large part to the years of trust Watson and OZY had built with its partners and staff and the success it had achieved. But then Smith's next wave of attacks hit, and OZY's advertisers and investors jumped ship.

148. On September 30, 2021, Ben Smith published another hit piece about Watson and OZY, republishing much of the false narrative from the original article and now also claiming that OZY had misled staff and advertisers about A&E's commitment to distribute The Carlos Watson Show. But that story was likewise false and misleading—A&E had in fact partnered with OZY to broadcast the show, but A&E's timetable did not match the speed with which OZY wanted to go to air, so OZY decided to first launch on YouTube, with A&E broadcasts to follow.

149. By that point, the damage was done. For example, Marc Lasry resigned as Chairman of OZY's Board and investor Ron Conway returned his shares of OZY. OZY advertisers like Chevrolet, Walmart, Facebook, Target, and Goldman Sachs suspended their advertising spending. And even journalists like Katty Kay resigned, buying into Smith's narrative.

150. By the afternoon of September 30, the OZY Board—now comprising just Watson and Michael Moe—issued a statement notifying all staff that OZY was suspending operations and possibly shutting down.

151. Ben Smith's capitalization of the shutdown was rapid and relentless. On October 1, 2021, he published another article in The Times recycling the same false claims and taking credit

for OZY's downfall: "When the end came, it came swiftly, five days after The New York Times published an article that raised questions about the company and its leadership team."[33]

152. Two days later, Smith published yet another story, this time stating in no uncertain terms that OZY was nothing more than a "scam[] and hype," and that Watson himself was the latest version of "Elizabeth Holmes": "the ambitious dreamer who seemed to believe what he was selling," even though it was fake.

153. And Smith claimed that part of the reason OZY was able to attract investors was that these highly sophisticated investors did not conduct any real due diligence. The investors he was referring to included venture capital giants like Laurene Powell Jobs and Emerson Collective, Marc Lasry, Axel Springer (by then owned by KKR), GSV Holdings, and Goldman Sachs. But of course, Smith knew, first-hand, what type of due diligence had been done into OZY's business, because he himself had been a central figure in just such efforts two years before.

154. Smith made the same claims during his media tour promoting his articles. For example, on CNBC's Squawk Box with Andrew Ross Sorkin, he not only repeated the false OZY narrative, he again lied about his role in BuzzFeed's attempt to buy OZY. When asked directly about the acquisition and his role in it, Smith squirmed, and claimed that he was only "on the margins" of the acquisition and "didn't know a lot about it…I left while it was happening."[34]

[33] Ben Smith & Katie Robertson, *Ozy Media, Once a Darling of Investors, Shuts Down in a Swift Unraveling*, N.Y. Times (Oct. 1, 2021), https://www.nytimes.com/2021/10/01/business/media/ozy-media-carlos-watson.html.

[34] CNBC Television, *NYTimes' Smith discusses Ozy Media's rapid downfall following exposé*, YouTube (Oct. 4, 2021), https://www.youtube.com/watch?v=2mpLcIPSz6g&t=128s.



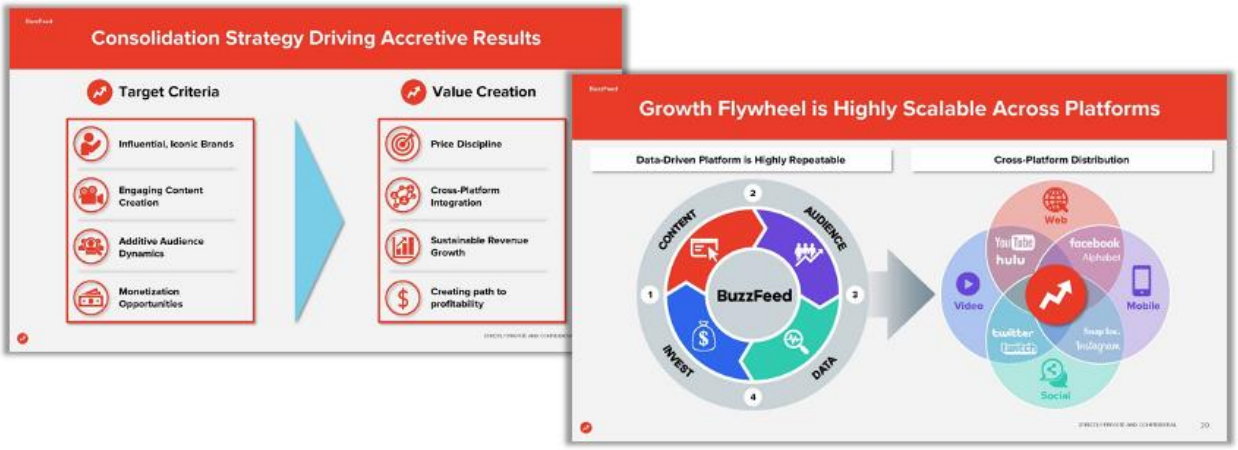
October 4, 2021 Appearance by Ben Smith on CNBC's Squawk Box

155. That was all false—Ben Smith was heavily involved in the acquisition, and was at BuzzFeed when Watson formally turned down Peretti's last offer.

VIII. BuzzFeed Goes Public, and Ben Smith Cashes In.

156. In June 2021, BuzzFeed officially announced its plan to go public. A critical pitch to investors to enable the IPO was BuzzFeed's commitment and mission to create "Cross-Platform Integration" of "compelling content" to engage its audience and generate revenue.[35] Curiously absent from any of BuzzFeed's presentations and pitch documents shared during its attempted acquisition of OZY, was any reference to a focus on cross- or multi-platform integration using quality and compelling original content to generate multiple revenue streams—in fact, that is precisely what OZY shared with BuzzFeed and a major driver of the acquisition in the first place. But now, less than two years later and seeking to cash in on an IPO, BuzzFeed was presenting to current and potential investors that its future would be built on the exact model it had gotten a months-long tutorial on from OZY.

[35] *See* BuzzFeed Investor Presentation, (June 2021) https://www.sec.gov/Archives/edgar/data/1828972/000110465921085218/tm2120621d1_ex99-2.htm.



BuzzFeed's June 2021 Investor Presentation

157. Six months later, on December 6, 2021, BuzzFeed went public at a $1.5 billion valuation. The stock initially traded around $10, but within several days, BuzzFeed's stock price began to plummet. By December 10, the stock price was down to $6. Two years later, BuzzFeed's stock price is hovering around $.30 a share and has been threatened with delisting from the Nasdaq. In April 2023, BuzzFeed News shuttered.

158. Sadly, many of BuzzFeed's employees were saddled with classes of stock that either prohibited or created significant restrictions on when and how they could sell. And some of BuzzFeed's own former employees have wondered whether Ben Smith in particular "had been able to sell his shares" when BuzzFeed first went public and was at its highest value.[36]

159. Ben Smith has made no effort to squash that notion, either referring questions to others for response or outright refusing to answer the question when directly asked: "I do not share the millennial compulsion to disclose your personal income."[37] Upon information and belief,

[36] Clare Malone, *How Former BuzzFeed Employees Missed Their Big Payday*, New Yorker (Dec. 12, 2021), https://www.newyorker.com/news/annals-of-communications/how-former-buzzfeed-employees-missed-their-big-payday.

[37] Joe Pompeo, *"I Was Pretty Utopian": With BuzzFeed News in the Grave, Ben Smith Reflects on Digital Media's Convulsions*, Vanity Fair (May 1, 2023), https://www.vanityfair.com/news/2023/04/ben-smith-buzzfeed-news-traffic.

Smith's BuzzFeed stock was not restricted, and Smith sold his shares at the outset of BuzzFeed going public for millions of dollars in profit.

IX. Armed With a Windfall from the BuzzFeed IPO and with OZY Out of the Way, Ben Smith Partners with Bloomberg Media Group CEO Justin Smith to Create a New Media Company: Semafor.

160. Ben Smith and Justin Smith claim that they came up with an idea to form a new media organization while sitting on a bench together in Davos, Switzerland in 2018.[38] By Summer 2021 Ben Smith—while still holding his stake in BuzzFeed and as he began planning his OZY story—and Justin Smith began planning to start their own media organization "in earnest."[39] Four years later, in January 2022, less than a month after BuzzFeed's IPO, Ben Smith abruptly resigned from his job at The New York Times to join up with Bloomberg Media Group CEO Justin Smith to start that new mystery media organization.

161. On January 16, 2022, they registered the name "Semafor," a reference to the Greek term for "bearer of a signal."[40]

A. The Smiths create Semafor as OZY 2.0—and don't try to hide it.

162. The idea for Semafor from the outset was to "fill a void" that its founders believed existed in January 2022, and which the mainstream media could not address:

> This large new global audience, rising consumer frustration with legacy news platforms, increasingly diverse revenue streams for premium journalism, and the entrepreneurial talent gap in news media open up a space for something new. There is an opportunity to reimagine quality global journalism, and the talent model that supports it, for the most worldly audience in human history.[41]

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[38] Adam Piore, *Meet the Smiths: The partnership that led to Semafor*, Columbia Journalism Review (Nov. 21, 2022), https://www.cjr.org/special_report/semafor-the-smiths.php.
[39] *Id*.
[40] Sara Fischer, *Scoop: Smiths to name new company "Semafor,"* Axios (Mar. 22, 2022), https://www.axios.com/2022/03/22/semafor-smith-media-company-name.
[41] Sara Fischer, *Media disrupters chase global audience*, Axios (Jan. 5, 2022), https://www.axios.com/2022/01/05/ben-justin-smith-news-startup.

163. It turns out that the "new" organization they intended to build to fill the "void" they saw in modern media was based on the same audience, journalism focus, multi-platform emphasis, investor demographic, and advertiser type that OZY had pioneered over the previous decade.

164. While Ben Smith was coy at the outset about what this media company would be, he and Justin Smith let slip that the company would be geared towards the "200 million college-educated people around the world," would focus on avoiding a "perception of bias," and would not "cater[] to social media."[42] Semafor would target its company towards an "elite audience" by hiring "superstar reporters."

165. Over the course of the next six months, the Smiths went on a "hunt for cash" for their startup.[43] Their goals were to raise $20-$30 million before their Fall 2022 launch, and $80-$100 million total before becoming profitable. And rather than pitching "Silicon Valley venture funds," they "instead targeted mostly wealthy individuals and family offices"—including "Laurene Powell Jobs' Emerson Collective."

166. Their initial pitches to investors like Powell Jobs and Emerson Collective included Semafor's planned business model: reliance on subscription newsletters, video and original content production, and live events. Those pitches included a specific "plan to host a signature event in 2023 with sponsors."[44]

167. Semafor was likewise immediately successful in raising capital. By June 2022, Semafor had raised $24.6 million. And by May 2023, Semafor had raised another $19 million,

[42] Peter Kafka, *Ben Smith had one of the coolest jobs in journalism. Now he wants to do something else.*, Vox (Jan. 4, 2022), https://www.vox.com/recode/22867616/ben-smith-justin-smith-new-york-times-bloomberg.
[43] Sara Fischer, *Scoop: Inside the Smiths' hunt for cash*, Axios (Mar. 1, 2022), https://www.axios.com/2022/03/01/smiths-news-outlet-funding.
[44] *Id.*

and its roster of investors included Henry Kravis, the co-founder of KKR and majority owner of Axel Springer, David Bradley, and John Thornton. Axel Springer was of course a significant investor and partner of OZY, and Bradley and Thornton were close Powell Jobs allies: Bradley had previously sold The Atlantic to Powell Jobs and Emerson Collective and remained a minority owner in the publisher; and Emerson Collective is an investor in Thornton's The American Journalism Project, on whose board Powell Jobs partner Peter Lattman sits.

168. In October 2022, Semafor officially launched. On launch day, visitors to Semafor's website were immediately met with a notification to "sign up for [Semafor's] newsletters."[45] The website featured a page devoted entirely to Semafor's "Events"[46] and a link to Semafor's YouTube channel, already populated with Semafor original content.[47]



169. Ben Smith himself delivered Semafor's promise of what it was giving its readers: with its "**newsletters, website, videos, and events**, we're focused on bringing in diverse views

[45] Semafor, https://www.semafor.com/ (Oct. 18, 2022), [https://web.archive.org/web/20221018000004/https://www.semafor.com/].
[46] SemaforX, (Oct. 18, 2022), https://www.semafor.com/events [https://web.archive.org/web/20221018115705/https://www.semafor.com/events].
[47] Semafor, YouTube (Oct. 19, 2022), https://www.youtube.com/c/semafor [https://web.archive.org/web/20220929211130/https://www.youtube.com/c/semafor].

that may differ from our own analysis, and on including a global perspective on the day's most important stories."[48]

170. And Semafor's revenue generation model was likewise eerily familiar. Its business model was reported to be "entirely reliant on direct-sold advertising and event sponsorship revenue."[49] Semafor's Chief Revenue Officer stated that the company "prioritizes 'innovative' branded content and running ads against 'experimental' editorial products," and that a focus "on the pockets of advertisers' budgets that are directed to corporate reputation building will help insulate the company from the ebbs and flows of consumer and product advertising." Semafor's CRO went on:

> [There is a trend toward] orchestration amongst many different revenue streams that can ultimately fuel and feed each other. **Having a really strong and healthy subscriber revenue business can fuel your advertising business; [it] can fuel your licensing business; [it] can fuel your events business.** These are all different components in the same machine. Even single revenue streams are becoming so much more cross functional and so much more interconnected and interdependent. We need to be able to coordinate with our design teams, our product teams, our audience development teams, our [communications] and PR teams all to pull off really creative, integrated programs and partnerships. **One of the superpowers of starting from scratch is being able to design a media company with cross-functional work as a bedrock of how we work**, because we're not in a world anymore, where the advertising team exists as a silo. That was another huge selling point for me of being able to come [to Semafor].

[48] Semafor, *An accident at SpaceX and the unsung heroes of space*, YouTube (Oct. 18, 2022), https://www.youtube.com/channel/UCtB4ylCuQW0ue8ACIsHmD1w [https://web.archive.org/web/20221018115752/https://www.youtube.com/channel/UCtB4ylCuQW0ue8ACIsHmD1w.

[49] Kayleigh Barber, *Why Semafor's CRO Rachel Oppenheim is putting clients first while building an entirely ad-based revenue model*, Digiday (Nov. 1, 2022), https://digiday.com/media/why-semafors-cro-rachel-oppenheim-is-putting-clients-first-while-building-an-entirely-ad-based-revenue-model/.

171. Semafor's CRO specifically called out the company's partnership with Hyundai, which she boasted was working with Semafor "across platforms, from our email newsletters to our video journalism."

172. In 2022, Semafor's events were already a significant part of its business, accounting for 30% of its revenue, with an expected increase in 2023.[50] By May 2023, Semafor had booked "more than $10 million in revenue…split between advertising and events."[51] And within a year of launch, Semafor claimed that its events business was "pacing above what it expected" and had become "central to doubling the total client base the company launched with."[52]

173. At present, Semafor has nearly a half a million engaged newsletter subscriptions, 3 million monthly readers on and off platform, thousands of live-event participants, and 40 global marketing partners. And in 2024, Semafor is planning for its largest live event yet: the Semafor World Economy Summit 2024, in partnership with BCG.[53]

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[50] Alex Weprin, *Semafor Plans Inaugural Media Summit: Chris Licht, Jen Psaki, Barry Diller Among Interviewees (Exclusive)*, Hollywood Reporter (Mar. 23, 2023), https://www.hollywoodreporter.com/business/digital/semafor-media-event-chris-licht-jen-psaki-barry-diller-1235358603/.

[51] Benjamin Mullin, *Semafor Raises $19 Million, Replacing Money From Sam Bankman-Fried*, N.Y. Times (May 24, 2023), https://www.nytimes.com/2023/05/24/business/media/semafor-funding-bankman-fried.html.

[52] Kayleigh Barber, *Media Briefing: How Axios, Bloomberg and Semafor grew their events revenue in 2023*, Digiday (Oct. 12, 2023), https://digiday.com/media/media-briefing-how-axios-bloomberg-and-semafor-grew-their-events-revenue-in-2023/.

[53] *World Economy Summit*, Semafor (last visited Dec. 19, 2023), https://events.semafor.com/worldeconomysummit2024.



Semafor Announcement, World Economy Summit 2024

B. The Smiths and Semafor use OZY's Proprietary Information, which Ben Smith acquired during the due diligence of OZY, to design and implement Semafor's business model, pitch and acquire investors, and sign up advertisers.

174. From the beginning, it was clear that Ben Smith, having reverse engineered OZY, deployed OZY's Proprietary Information at Semafor. His new company was focused on (1) presenting news and information to well-educated, socially conscious millennials eager to escape from the polarizing news climate of the 21st century; (2) directly engaging its audience through multiple platforms, including subscription newsletters and live events; (3) pitching and securing advertisers and partners with and for premium, reputation-building video content; and (4) generating multiple cross-functional revenue streams across various platforms.

175. OZY's end product was out there for all to see, including Ben Smith and Semafor. Its TV shows were lauded and award-winning, its podcasts were listened to by millions, and thousands flocked to its OZY Fests. And its investors and advertisers were often publicly reported.

But what the public did not see, because OZY closely guarded it, was how it operated all of its platforms, pitched and secured its investors, advertisers, and partners, and ultimately generated revenue from each of its cross-functional platforms. But Ben Smith did, because he was given unfettered access to OZY's trade secrets during the BuzzFeed acquisition process. OZY had spent years developing its playbook for operating and generating revenue from its cross-functional multi-platform media company, and Semafor had employed the very same playbook right out of the gate. Ben Smith did not just take the proverbial ***page*** out of the OZY playbook: he took the ***entire*** playbook.

176. Through the OZY Studio's Deals Playbook, Ben Smith had access to a play-by-play guide for developing original video content; ideal contract terms, licensing strategies, and revenue splits for advertising and partnership deals; and tips and strategies for TV and video expansion. Semafor has built up an original video programming platform with high-profile partnerships and advertisers that mirrors OZY's.

177. Ben Smith had access to OZY's strategy guides, operating procedures, and Watson's personal insight into its subscription email newsletters and festival and live-event platforms, which included detailed breakdowns for pitching advertisers for them, how to generate the most email "opens" for newsletters and marketing for live events, and how to cross-market other platforms through and generate advertising revenue for both. Upon launch (and even before), Semafor had set up a complete email newsletter platform and sponsored live-event operation, from which it generated company-supporting revenue immediately.

178. Ben Smith had access to OZY's detailed financial, sales, and audience breakdowns, which not only informed him that his takedown of OZY was knowingly false, but also exactly how a successful, multi-platform media company should allocate resources and from what sources it

should expect to derive revenue at various stages of the company's existence. And Smith would have understood from those documents the value of a target demographic of college-educated millennials who are engaged by high-quality and balanced content that profiles stories and individuals that other outlets ignore.

179. Ben Smith also had access to documents showing, and was specifically coached by Watson, how to pitch and secure the exact kind of investors Semafor sought out. Watson had shared documents and his own insights into pitching the exact profile of investor Smith and Semafor coveted: wealthy individuals and family offices focused on the right balance of revenue generation and social consciousness. And Watson shared the same for specific investors like Powell Jobs and Emerson Collective and Axel Springer. Lo and behold, Semafor landed a roster of just those types of investors, including some close to Powell Jobs (David Bradley and John Thornton) and KKR—now the parent company to Axel Springer.

X. Against All Odds, OZY Begins a Comeback.

180. As Ben Smith was busy launching his own replication of OZY, OZY itself was planning a comeback.

181. First, OZY took care of its employees, agreeing to provide more than $1 million in severance packages to most of its full-time employees who departed in the aftermath of Ben Smith's campaign.

182. Then, Watson—again with the moral and financial support of his family and a few strategic partners—rebuilt OZY's structure. Watson and his family liquidated assets and borrowed money to meet weekly payroll and finance OZY's day-to-day operations. With that support, they rebuilt a network of more than 50 reporters, editors, producers, and videographers to begin putting out new content again. In 2022, OZY put out a dynamic new TV show called Sneaker Fiends, a cutting-edge podcast called She-roics, created The Drop newsletter, and began winning back

Fortune 500 companies as advertisers. And, with the backing of several prominent sponsors, OZY put together plans to relaunch OZY Fest—this time in the city where Watson's dream originally began: Miami, FL.

183. By February 2023, OZY was building momentum. Then, on February 9, Semafor published its own story on OZY's attempted "comeback."[54] Predictably, Semafor's article was another hit piece, defying its own commitment to what it dubbed "Semaform": separating "undisputed facts from the reporter's analysis of those facts."[55] The "undisputed facts" section for this article was nothing more than a rehash of Ben Smith's knowingly false reporting, and criticized Watson's presentation at a live event to potential advertisers—even falsely describing it as a pitch to investors. Indeed, even the "Room for Disagreement" section—designed to present a counterpoint to the reporter's perspective—portrayed Watson as delusional in the face of Semafor and Ben Smith's facts.

184. Within two weeks of Semafor's article, OZY's world would come crashing down again.

XI. Overzealous Prosecutors File Charges Against Watson and OZY—Dashing OZY's Comeback.

185. On February 23, 2023, federal prosecutors operating out of Brooklyn, New York—Ben Smith's backyard but roughly 3,000 miles from where Watson lives and OZY was based—issued indictments for both OZY and Watson himself, largely parroting the false accusations levied in Ben Smith's reporting in Fall 2021.

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[54] Max Tani, *Media company Ozy is attempting a comeback*, Semafour (Feb. 9, 2023), https://www.semafor.com/article/02/08/2023/media-company-ozy-is-attempting-a-comeback.

[55] Gina Chua, *What is Semaform, anyway? And why should you care?* (Oct. 20, 2022), https://www.semafor.com/article/10/18/2022/what-is-a-semaform-anyway-and-why-should-you-care.

186. The indictment blamed Watson personally for Rao's foibles—even though Watson had no role in setting up the Goldman-YouTube reference check and even though no actual investments or transactions ever occurred as a result of Rao's conduct. Moreover, the general allegations against Watson and OZY regarding its representations about OZY's content, clients, and audience were belied by OZY's detailed records—the very same records that BuzzFeed and other investors were provided during the many due diligence exercises OZY had agreed to over the years.

187. Tellingly, prosecutors from the US Attorney's Office for the Eastern District of New York announced Watson's arrest by issuing a loaded press release, attacking Watson's "character or reputation" by calling Watson a "con man" who "ran OZY as a criminal organization rather than a reputable media company." In a November 6, 2023 order, the federal judge presiding over the case found the statements "gratuitously hyperbolic" such that "their public dissemination will interfere with [Watson's right to] a fair trial. ... [T]he government is advised to consider whether it wishes to excise or modify the language" of the press release. Ten days later, the US Attorney's Office removed the language from the press release.

188. Watson's motion to dismiss all charges is pending. Watson and OZY are preparing to clear their names at trial in May 2024.

XII. In May 2023, Ben Smith's Book Traffic: Genius, Rivalry, and Delusion in the Billion-Dollar Race to Go Viral is Published—in it, Smith Repeats the Very Same False Claims He Published in Fall 2021.

189. In the midst of Semafor's launch, OZY's attempted comeback, and the overreach of federal prosecutors, Ben Smith was working on yet another takedown piece: a book that would focus on the rise and fall of digital media companies like BuzzFeed, Gawker, and of course, OZY. Ben Smith struck a deal with Penguin Random House and set forth to author and publish what

would become his book, *Traffic: Genius, Rivalry, and Delusion in the Billion-Dollar Race to Go Viral*.

190. But before publication, Ben Smith of course took the opportunity to do a media tour to promote the book. And during that tour, he let out even more details of how he had implemented OZY's secret playbook at Semafor. Less than a week before its official release, Ben Smith did an interview for The Intercept's Deconstructed podcast.[56] In it, he confessed that what Semafor was basically doing was "sending out newsletters" as a way of "reaching [its audience] directly" with tailored content. And when the conversation turned to how Semafor "think[s] about video," Ben Smith again used OZY's material as his own: "build an audience on YouTube" with "interesting work," then parlay that quality content into partnerships with established content distributors, like Netflix.

191. On May 2, 2023, Ben Smith's *Traffic* was released. Readers immediately understood the book to be an attack on OZY and Watson, with one reviewer describing "OZY charlatan Carlos Watson" as one of "Smith's scalps."[57] That's because the book republished the very same false allegations about OZY he made in Fall 2021, only this time he came right out and called Watson and OZY "fake." In the chapter focusing on OZY—and BuzzFeed's attempts to acquire it—Ben Smith pulled no punches in attacking OZY:

> The problem with Ozy was that it never quite found anyone who wanted that content. Perhaps nobody ever would have, but the measures of "meaningful social engagement" that Facebook and the other platforms were using to amplify the most divisive, angriest articles helped ensure that Ozy would get very little traffic. (Once, a chocolate chip cookie recipe went viral, but that wasn't on brand for

[56] Deconstructed, *Ben Smith on the Bust of the Digital Media Age*, Intercept (April 28, 2023), https://theintercept.com/2023/04/28/deconstructed-ben-smith-social-media-book/.
[57] Joe Pompeo, *"I Was Pretty Utopian": With BuzzFeed News in the Grave, Ben Smith Reflects on Digital Media's Convulsions*, Vanity Fair (May 1, 2023), https://www.vanityfair.com/news/2023/04/ben-smith-buzzfeed-news-traffic.

> Carlos, and the site never did it again.) **Instead, they faked it, at an escalating pace**—which Watson later defended as standard industry practice.[58]

192. Of course, Ben Smith knew that OZY had an audience, it just wasn't the audience that digital media companies typically had. It was not based on website views or social media clickbait; rather it was based on a broader and smarter set of platforms and methods for directly engaging media consumers. OZY hadn't "faked" its audience—it figured out how to accurately measure it, something other media companies couldn't do.

193. Smith went on:

> **Jonah saw through Ozy's traffic schemes**. You just had to look at its YouTube pages, on which some videos had just a handful of views, to see what was going on. **But he was impressed with Carlos; if he could bring in $40 million in annual revenue selling a fake product, imagine what he could do with a real one!**[59]

194. Again, Ben Smith knew what he published was false. Peretti did not "see through" any schemes; after he, Ben Smith, and BuzzFeed got a detailed look at OZY's traffic and revenue metrics, he knew that OZY had built something very real, which BuzzFeed wanted. That's why not only did he make an offer that exceeded $250 million for OZY, but he wanted to put Watson at the helm of it. Indeed, if Ben Smith's narrative was true, he was admitting that he and Peretti were themselves willing to commit fraud to save BuzzFeed.

195. But Ben Smith went somewhere with *Traffic* that he hadn't dared to go with The Times in Fall 2021—making false claims about Powell Jobs' investments in OZY and the actual efforts BuzzFeed made to acquire OZY:

> Carlos, as it emerged, had a bad habit of making promises he couldn't keep. With his salesman's talents, he grasped Jonah's situation, his need for the kind of bailout only Powell Jobs could perform. **But Powell Jobs's Silicon Valley circle had begun to**

[58] *Traffic* at 284.
[59] *Id*. at 285.

> **sour on Carlos years earlier, as word trickled back about the degree to which he was trading on her name and those of other early investors she had bought in, including the Silicon Valley angel investor Ron Conway. Powell Jobs hadn't invested in the company's most recent fundraising round. By November of 2019, it was clear that Carlos couldn't actually deliver his old friend's money, and Jonah lost interest**. Carlos would grow increasingly desperate, the fakery increasingly intense. **Powell Jobs and Conway began distancing themselves from the company**, and Carlos looked for new investors who would buy his story of a flashy new media company finding huge success on the internet.[60]

196. First, Ben Smith knew that Powell Jobs and Emerson Collective had invested $12 million in the final Series C round that OZY closed in September 2019—quite literally the same month BuzzFeed initiated acquisition talks with OZY. Nevertheless, he wrote that she had not.

197. Second, Ben Smith knew that Watson and Powell Jobs had a very strong professional relationship during BuzzFeed's attempted acquisition of OZY—Watson arranged for multiple meetings between himself, Powell Jobs, and Peretti, and that connection was paramount to the acquisition talks. And that direct and positive personal and professional relationship remained intact right up until and beyond Ben Smith's Fall 2021 hit pieces.

198. And third, Ben Smith knew that had Watson accepted BuzzFeed's final offer in January 2020—when Peretti was still actively and aggressively pursuing OZY—the plan was for Powell Jobs and Emerson Collective to be a major part of the new venture, including serving on its Board, right alongside Watson himself.

199. Smith's false claims in *Traffic* were carefully calculated. Semafor had spent over a year courting the very same investors and advertisers OZY had. Ben Smith knew he and Semafor would benefit from portraying these investors as having distanced themselves from OZY long before his Fall 2021 attacks and the false narrative about OZY's fraudulence spread.

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[60] *Id*. at 285-86.

XIII. As a Direct Result of Ben Smith's Long Con to Take for Himself What Watson and His Family Had Built, OZY Went from a $2 Billion Company to Nothing.

200. Leading into September 2021, OZY was on the cusp of realizing a $2 billion valuation in its upcoming Series E financing round. Watson, his three sisters, and his aging father, who had yet to take a dime out of OZY for themselves, were finally in position to see the rewards of their tireless work over most of a decade. That all came crashing to a halt when Ben Smith disregarded the facts, data, and analysis he had seen for himself about OZY and published in late September and early October 2021 false claims that OZY and Watson were frauds.

201. But Smith's deception did not just cost Watson, his family, and the OZY team everything; what the Watson family lost, Ben Smith gained. After reaping the profits from BuzzFeed's IPO, fueled in part by OZY's demise, he used what he took from OZY during the BuzzFeed acquisition process for himself, in violation of the Mutual NDA BuzzFeed signed with OZY and by which he knew he was bound, to "fill the void" left by OZY with his own media company, Semafor.

202. What has been a dream come true for Ben Smith has been a nightmare for the Watson and OZY families. OZY brings this claim to enforce its rights to the trade secrets it developed and safely guarded throughout its operations, to hold Ben Smith and his company Semafor accountable for the theft of those trade secrets, to hold BuzzFeed accountable for the breach of its duly executed Mutual NDA with OZY, for the harm Ben Smith and Semafor's theft and BuzzFeed's breach have caused OZY, and for the windfall of profits Ben Smith and Semafor have reaped as a result of their theft.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE DEFEND TRADE SECRETS ACT, 18 U.S.C. § 1836 (BENJAMIN SMITH & SEMAFOR, INC.)

203. OZY incorporates the above paragraphs as though fully set forth herein.

204. OZY maintained trade secrets about how it developed, operated, derived revenue from, and secured capital to fund its unique multi-platform, cross-functional media company. Those trade secrets included OZY's strategies for developing its TV, video, and podcast content, generating revenue from advertisers across all of its platforms and offerings, operating successful live events, pitching and securing investments from specific investors, and OZY's future prospects and opportunities, and those trade secrets were housed in, among other places:

a. OZY Studio's Deals Playbook;

b. OZY's strategy guides and operating procedures for its subscription email newsletters and OZY Fest;

c. Pitch sheets and investment memos with detailed strategies and tips for courting specific advertisers and investors;

d. OZY's Finance/Sales/Audience Spreadsheet;

e. OZY's Valuation Analysis;

205. OZY's trade secrets are owned by OZY and not generally known to the public and are not readily ascertainable by proper means.

206. OZY's trade secrets relate to OZY's business, products, and services which were used in or intended for use in interstate commerce.

207. OZY closely guarded and protected these trade secrets by, among other means, requiring all of its employees to sign confidentiality agreements prohibiting the disclosure, use, or copying and reverse engineering of OZY's trade secrets, strictly confining its trade secrets to select few employees on need-to-know bases, and by password protecting and housing such trade secrets in secure databases. Moreover, OZY required nondisclosure agreements in the event it considered sharing any such information with external parties.

208. OZY took necessary and reasonable steps to safeguard the confidentiality of its trade secrets by requiring and entering into a Mutual NDA with BuzzFeed before it shared any of its trade secrets, and by ensuring that the Mutual NDA likewise bound BuzzFeed's employees who gained access to such trade secrets to the restrictions of the Mutual NDA.

209. The Mutual NDA signed and executed by and between BuzzFeed and OZY specifically references the Defense of Trade Secrets Act and contemplates that the information shared by the companies would include trade secrets as defined by the DTSA.

210. Accordingly, OZY's trade secrets are such pursuant to 18 U.S.C. § 1836 *et seq*.

211. Ben Smith and Semafor misappropriated OZY's trade secrets by using them for their commercial gain and to build Semafor from the ground up, and pitched and successfully secured business and capital from the same or substantially similar investors and advertisers as OZY.

212. Ben Smith's and Semafor's misappropriation, use, and reverse engineering of OZY's trade secrets were intentional, knowing, willful, malicious, fraudulent, and done in wanton disregard of OZY's rights. Ben Smith and Semafor knew that OZY's trade secrets were confidential and were trade secrets and they knew that Ben Smith was obligated to maintain OZY's trade secrets as strictly confidential pursuant to the Mutual NDA Ben Smith was apprised of and agreed to be bound by, during the BuzzFeed's attempted acquisition of OZY. Nonetheless, without authorization or consent from OZY, Ben Smith and Semafor used and reverse engineered information from OZY's trade secrets to form, operate, and generate revenue from and investment capital for Semafor, to their financial benefit.

213. As a direct and proximate result of Ben Smith's and Semafor's misappropriation, use, and reverse engineering information from OZY's trade secrets, OZY has sustained substantial

injury including, but not limited to, actual damages, harm to its reputation, and the diminution in value of OZY's trade secrets and business.

214. Ben Smith and OZY have been unjustly enriched by misappropriating, using, and reverse engineering information from OZY's trade secrets. OZY is entitled to an award of the economic benefit realized by Ben Smith and Semafor from their misappropriation, use, and reverse engineering information from OZY's trade secrets.

215. OZY is entitled to an award of exemplary damages and reasonable attorneys' fees.

216. By reason of the foregoing, OZY has been damaged in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

MISAPPROPRIATION OF TRADE SECRETS (BENJAMIN SMITH & SEMAFOR, INC.)

217. OZY incorporates the above paragraphs as though fully set forth herein.

218. OZY maintained trade secrets about how it developed, operated, derived revenue from, and secured capital to fund its unique multi-platform, cross-functional media company. Those trade secrets included OZY's strategies for developing its TV, video, and podcast content, generating revenue from advertisers across all of its platforms and offerings, operating successful live events, pitching and securing investments from specific investors, and OZY's future prospects and opportunities, and those trade secrets were housed in, among other places:

a. OZY Studio's Deals Playbook;

b. OZY's strategy guides and operating procedures for its subscription email newsletters and OZY Fest;

c. Pitch sheets and investment memos with detailed strategies and tips for courting specific advertisers and investors;

d. OZY's Finance/Sales/Audience Spreadsheet;

e. OZY's Valuation Analysis;

219. OZY's trade secrets are owned by OZY and not generally known to the public and are not readily ascertainable by proper means.

220. OZY closely guarded and protected these trade secrets by, among other means, requiring all of its employees to sign confidentiality agreements prohibiting the disclosure, use, or copying and reverse engineering of OZY's trade secrets, strictly confining its trade secrets to select few employees on need-to-know bases, and by password protecting and housing such trade secrets in secure databases. Moreover, OZY required nondisclosure agreements in the event it considered sharing any such information with external parties.

221. OZY took necessary and reasonable steps to safeguard the confidentiality of its trade secrets by requiring and entering into a Mutual NDA with BuzzFeed before it shared any of its trade secrets, and by ensuring that the Mutual NDA likewise bound BuzzFeed's employees who gained access to such trade secrets to the restrictions of the Mutual NDA.

222. The Mutual NDA signed and executed by and between BuzzFeed and OZY specifically references the Defense of Trade Secrets Act and contemplates that the information shared by the companies would include trade secrets.

223. Accordingly, OZY's trade secrets are such pursuant to New York law.

224. Ben Smith and Semafor misappropriated OZY's trade secrets by using them for their commercial gain and to build Semafor from the ground up, and pitched and successfully secured business and capital from the same or substantially similar investors and advertisers as OZY.

225. Ben Smith's and Semafor's misappropriation, use, and reverse engineering of OZY's trade secrets were intentional, knowing, willful, malicious, fraudulent, and done in wanton disregard of OZY's rights. Ben Smith and Semafor knew that OZY's trade secrets were confidential and were trade secrets and they knew that Ben Smith was obligated to maintain OZY's trade secrets as strictly confidential pursuant to the Mutual NDA Ben Smith was apprised of and agreed to be bound by, during the BuzzFeed's attempted acquisition of OZY. Nonetheless, without authorization or consent from OZY, Ben Smith and Semafor used and reverse engineered information from OZY's trade secrets to form, operate, and generate revenue from and investment capital for Semafor, to their financial benefit.

226. As a direct and proximate result of Ben Smith's and Semafor's misappropriation, use, and reverse engineering information from OZY's trade secrets, OZY has sustained substantial injury including, but not limited to, actual damages, harm to its reputation, and the diminution in value of OZY's trade secrets and business.

227. Ben Smith and OZY have been unjustly enriched by misappropriating, using, and reverse engineering information from OZY's trade secrets. OZY is entitled to an award of the economic benefit realized by Ben Smith and Semafor from their misappropriation, use, and reverse engineering information from OZY's trade secrets.

228. OZY is entitled to an award of exemplary damages and reasonable attorneys' fees.

229. By reason of the foregoing, OZY has been damaged in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

BREACH OF CONTRACT (BUZZFEED, INC.)

230. OZY incorporates the above paragraphs as though fully set forth herein.

231. The Mutual NDA was, beginning on September 23, 2019, and remains today a valid and existing contract between OZY and BuzzFeed. *See* Exhibit A.

232. OZY has performed all of its obligations under the Mutual NDA.

233. The Mutual NDA imposes binding contractual obligations on BuzzFeed at all relevant times:

a. "not to divulge any such Proprietary Information or any information derived therefrom to any third person other than [BuzzFeed's] employees, affiliates and agents who have a need to know for the permitted purpose and who are apprised of and have agreed to the confidential nature of the Proprietary Information and all of the restrictions in this Agreement";

b. "not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally its relationship with" OZY; and

c. "not to copy or reverse engineer any such Proprietary Information."

234. The Mutual NDA renders BuzzFeed liable for any breaches of the binding obligations by any of its employees, affiliates, or agents.

235. At the time of execution of the Mutual NDA and throughout the entirety of the acquisition process, Ben Smith was an employee of BuzzFeed.

236. Ben Smith disclosed to others at Semafor, used, and reverse engineered information from OZY's proprietary information outside of the acquisition process for his commercial gain and to build Semafor from the ground up, and to pitch and successfully secure business and capital from the same or substantially similar investors and advertisers as OZY.

237. By reason of the foregoing, OZY has been damaged, deprived of its use of its closely held trade secrets, and prohibited from operating its business, in in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff OZY Media, Inc. respectfully requests that the Court enter judgment in Plaintiff's favor, and against Defendants, as follows:

238. That the Court enter judgment in OZY's favor and against BuzzFeed, Benjamin Smith, and Semafor respectively on all causes of action alleged herein;

239. That the Court award injunctive relief, including ordering that:

a. Benjamin Smith and Semafor, including any of its officers, agents, servants, employees, and all persons in active concert or participation with them, be preliminarily and permanently restrained and enjoined from misappropriating, disclosing, or using OZY's Confidential Information and trade secrets;

b. Benjamin Smith and Semafor be enjoined from further accessing any of OZY's Confidential Information in their possession;

c. Other appropriate injunctive relief.

240. That OZY recover compensatory damages, consequential damages, restitution, and other compensation for the harm sustained by virtue of Defendants' wrongdoing, in an amount to be established at trial;

241. That Ben Smith and Semafor be ordered to account for and pay to OZY all gains, profits and advantages derived by Ben Smith and Semafor from the above-described wrongful acts;

242. That the Court issue an order multiplying or otherwise enhancing any award under the DTSA;

243. That the Court award punitive damages or other exemplary damages, as permitted by statute and contract, in an amount to be proved at trial;

244. That OZY recover any other damages permitted by statute or contract;

245. That OZY recover attorneys' fees and the costs of suit herein as authorized by the DTSA and agreed to in the September 23, 2019 Mutual Non-Disclosure Agreement;

246. That OZY recover pre-judgment and post-judgment interest at the maximum legal rate; and

247. Such other and further relief as the Court may deem to be just and proper.

JURY TRIAL DEMAND

OZY Media, Inc. demands trial by jury for all claims and issues that are so triable.

Date: December 21, 2023

/s/ Alexander Sakin

Respectfully submitted,

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Exhibit A

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BuzzFeed

MUTUAL NONDISCLOSURE AGREEMENT

Each undersigned party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to a potential business relationship or transaction between the parties or to the Disclosing Party's business (including, without limitation, business partners, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which is in writing, by way of any other media or is disclosed orally or visually and is either marked as "Confidential", "Proprietary" or the like or is disclosed in such a manner that a reasonable person would understand that such information is confidential, and which to the extent previously, presently or subsequently disclosed to the Receiving Party is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

In consideration of the parties' discussions and any access of the Receiving Party to Proprietary Information of the Disclosing Party, the Receiving Party hereby agrees as follows:

1. The Receiving Party agrees (i) to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its confidential materials), (ii) not to divulge any such Proprietary Information or any information derived therefrom to any third person other than Receiving Party's employees, affiliates and agents who have a need to know for the permitted purpose and who are apprised of and have agreed to the confidential nature of the Proprietary Information and all of the restrictions in this Agreement, (iii) not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally its relationship with the Disclosing Party, and (iv) not to copy or reverse engineer any such Proprietary Information. Each party shall be responsible for any breach of confidentiality by its respective employees and agents. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (b) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party without restriction, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who have had no access to such information.

2. Any disclosure by the Receiving Party of any of the Disclosing Party's Proprietary Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**") shall be subject to the terms of this Section. Prior to making any such disclosure, the Receiving Party shall make commercially reasonable efforts to provide the Disclosing Party with (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Receiving Party remains subject to a Legal Order to disclose any Proprietary Information, the Receiving Party shall disclose no more than that portion of the Proprietary Information which, on the advice of the Receiving Party's legal counsel, such Legal Order specifically requires the Receiving Party to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Proprietary Information will be afforded confidential treatment.

3. Immediately upon a request by the Disclosing Party at any time the Receiving Party will turn over to the Disclosing Party all Proprietary Information of the Disclosing Party and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof, or at Disclosing Party's request, destroy such Proprietary Information and confirm in writing that it has done so. The Receiving Party understands that nothing herein (i) requires the disclosure of any Proprietary Information of the Disclosing Party or (ii) requires the Disclosing Party to proceed with any transaction or relationship.

4. The term of this Agreement shall commence on the Effective Date and shall terminate at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of two

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(2) years from the date of any disclosure by the Disclosing Party, even after the return or destruction of Proprietary Information by the Receiving Party.

5. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

6. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, which breach may result in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief, without the requirement of posting a bond or surety, in addition to whatever remedies it might have at law. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. This Agreement shall be governed by the law of the State of New York without regard to the conflicts of law provisions thereof. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party, except that either party may assign the Agreement to an affiliate, its parent or subsidiaries, or to an entity that acquires all or substantially all of the party's assets and assumes all liability related to the rights under this Agreement. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. No waiver or modification of this Agreement will be binding upon a party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver.

7. **Notice of Immunity Under the Defend Trade Secrets Act of 2016 ("DTSA"), 18 U.S.C. § 1833(b).** Notwithstanding the obligations listed above, the Receiving Party is aware that the Receiving Party shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

BUZZFEED, INC.

DocuSigned by:
By: _____
5D6A751B505A4CC...

Print: Jonah Peretti

Title: CEO

Date: 9/23/2019

Company: OZY Media Inc.

DocuSigned by:
By: Samir Rao
F6EC4B5FD68E4AD...

Print: Samir Rao

Title: VP Operations

Date: 9/23/2019

JS 44 (Rev. 4-29-21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

OZY Media Inc.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Law Office of Alexander Sakin, LLC; 5 West 37th St., Suite 638, New York, NY 10018; 917-509-7573

DEFENDANTS

Benjamin Smith, Semafor Inc., and BuzzFeed, Inc.

County of Residence of First Listed Defendant Kings
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

Does this action include a motion for temporary restraining order or order to show cause? Yes ☐ No ☑"

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☒ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
18 U.S.C. § 1836 et seq.

Brief description of cause:
Willful misappropriation of Plaintiff's trade secrets

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
12/21/2023

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Alexander Sakin, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☑ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

None

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 1(c)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☑ No

2.) If you answered "no" above:

a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☑ No

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☐ Yes ☑ No

c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: .

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☑ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☑ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain ☑ No

I certify the accuracy of all information provided above.

Signature: _____