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Attorney for *Contestant Joey Gilbert*

**FIRST JUDICIAL DISTRICT COURT**

**CARSON CITY, NEVADA**

JOEY GILBERT, an individual,

Plaintiff,

vs.

JOSEPH LOMBARDO, putative  
Republican candidate for Governor of  
Nevada.

Defendant.

**CASE NO. 22 OC 000851B**

**DEPARTMENT 2**

**CONTESTANT’S OPPOSITION TO DEFENDANT’S  
MOTION FOR SANCTIONS**

COMES NOW, Contestant, Joey Gilbert, by and through his attorney CRAIG MUELLER, ESQ. of MUELLER & ASSOCIATES, INC., and hereby submits his OPPOSITION TO DEFENDANT’S MOTION FOR SANCTIONS.

This Memorandum of Points and Authorities is made and based on the following information, any documents and exhibits which may be attached hereto, and any oral argument this Honorable Court may allow at time of hearing, if any.



1           1.     Mr. Gilbert was a candidate for the office of Governor in the 2022 Primary that  
2 was held on June 14, 2022.

3           2.     Mr. Lombardo is the Sheriff of Clark County and was a candidate for the office of  
4 Governor in the 2022 Primary held on June 14, 2022.

5           3.     Mr. Gilbert contested the vote count of the 2022 Primary, and continues to contest  
6 that Mr. Lombardo was the winner of that Primary. See Exhibit 1, Statement of Contest (on  
7 file).

8           4.     The statements made in paragraph 4 are not supported by any authenticated  
9 document attached to Defendant's Motion for Sanctions and form no basis for the award of  
10 attorney fees.

11           5.     On June 24, 2022, the votes from the 2022 Primary were certified.

12           6.     Mr. Gilbert requested a statewide recount of the 2022 Primary. All other  
13 statements contained in Defendants paragraph 6 are opinionated commentary.

14           7.     The County Commissioners from each county in Nevada certified the results of  
15 the recount showing that the vote count for Mr. Lombardo exceeded the vote count for Mr.  
16 Gilbert.

17           8.     Although, Mr. Wlaschin stated he was not aware of any wide scale instances of  
18 voting fraud, Mr. Wlaschin testified that his office simply verifies the information provided  
19 from the counties matches what they receive from the State, then puts the information into their  
20 system; they do not look at voting trends or patterns to determine if votes for any candidate  
21 makes sense. Exhibit 2, Deposition Transcript of Mark Alan Wlaschin, pg. 51-53. Mr. Wlaschin  
22 agreed that if mail in vote count could be predicted with accuracy solely based on street vote  
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1 and early voting that would be indicative of a flawed election, not possible, and “absolutely  
2 suspect”. Exhibit 2, Dep. Tr. Wlaschin, pg. 57-59.

3 9. Mr. Gloria, Clark County Registrar of Voters, likewise testified that he was not  
4 aware of any wide scale instances of voting fraud in Clark County; Exhibit 3, Deposition  
5 Transcript of Joe Gloria, pg. 26, but agreed that he was testifying as an expert witness in  
6 elections, and that if you can determine with accuracy the mail-in votes in all Clark County  
7 precincts through a mathematical formula, that in his opinion as an expert, that would not be  
8 reasonable; that there is no way it could happen. Exhibit 3, Dep. Tr. Gloria, pg. 31-33.

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10 10. The statement in paragraph 9 of Defendant’s Motion for Sanctions is unsupported  
11 by anything cited to in the record.

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13 11. Dr. Oliver Hemmers, one of three experts retained by Contestant’s attorney, was  
14 retained fourteen days before the filing of the Statement of Contest. He initially was retained to  
15 review a report entitled “Clark County 2022, Governor Primary Precinct Analysis; Summary”,  
16 (a report by Edward Solomon), as to the mathematical and statistical analysis used in that report.  
17 Dr. Hemmers provided Contestant’s attorney, on July 2, 2022, a report stating that in his  
18 professional opinion that the reviewed paper, was based on established statistics and statistical  
19 analyses and correct in its described methods; that a restoration of the 2022 Gubernatorial  
20 Primary election data is necessary to correct obvious flaws in the original data, and a restoration  
21 will affect all candidates’ election results significantly. Exhibit 4; initial Report of Dr. Oliver A.  
22 Hemmers dated July 2, 2022; Exhibit 5, Deposition Transcript of Oliver Hemmers, pg. 29. Dr.  
23 Hemmers, although not a mathematician, has a Ph.D. in quantum physics, and 27 years of  
24 experience and research in building and designing elementary particle analyzers and  
25 containment vessels that requires data analysis involving statistical particle distribution and  
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1 regression analysis and employing mathematical data interpretation techniques in order to  
2 discern real data from fake or experimental findings; the same type of analysis he was retained  
3 to review and opine on here. Exhibit 4, initial Hemmers Report, pg. 1.

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5 12. Dr. Walter Daugherty, a Senior Lecturer Emeritus in the Department of  
6 Computer Science and Engineering at Texas A&M University, was retained to review reports  
7 from Edward Solomon and to conduct an independent mathematical analysis to determine if  
8 mail-in votes for the candidates could be mathematically determined by only knowing certain  
9 vote counts. Exhibit 6, initial Declaration of Expert Walter C. Daugherty dated July 14, 2022,  
10 ¶¶ 1, 6, 10-17, 22, and C.V. of Walter Daugherty. Dr. Daugherty determined, based on his own  
11 mathematical analysis, that mail-in votes for candidate Lombardo were dependent on other vote  
12 totals when they should be independent, as in a fair and honest election; that this predictability  
13 was constant throughout all precincts in Clark County with countable votes; and that this  
14 dependency and predictability demonstrated by clear and convincing evidence that the election  
15 results were not produced by an accurate counting of votes, and were instead, artificially  
16 contrived. Exhibit 6, initial Declaration Daugherty, ¶¶ 6, 10-17, 22. This initial report was  
17 provided and attached to Contestant's Statement of Contest. See Exhibit 1; Statement of Contest  
18 (on file). The remaining statements provided by Defendant Lombardo are either irrelevant or  
19 opinionated commentary that is not a statement of fact.

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23 13. Dr. Daugherty has testified as an expert in other election fraud cases; has never  
24 had his opinions either stricken or deemed unreliable in election fraud cases, but in a South  
25 Carolina baby monitor product defect suit he did have his opinion held to be unreliable and  
26 inadmissible; an opinion that has no similarity or relevancy to his opinions given in the  
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1 Statement of Contest. Exhibit 7, Deposition Transcript of Dr. Walter C. Daugherty, pgs. 13-20,  
2 24-26.

3 14. Dr. G. Donald Allen, a Professor Emeritus in the Department of Mathematics at  
4 Texas A&M University, an author of numerous works pertaining to mathematics, who taught  
5 mathematics at both the undergraduate and graduate levels for 46 years, and who has published  
6 more than 80 research articles related to operator theory, functional, analysis, mathematics  
7 education, nutronics, political systems, and philosophy topics, provided to Contestant's counsel  
8 his initial Declaration that was later attached to the Statement of Contest. See Exhibit 1,  
9 Statement of Contest (on file), Exhibit 8, initial Declaration of Expert G. Donald Allen; Exhibit  
10 9, C.V. of Expert G. Donald Allen. Dr. Allen states that he reviewed mathematically the reports  
11 of Edward Solomon, and that in his expert opinion, the reports demonstrated clear and  
12 convincing evidence that the election results from the Republican gubernatorial primary in  
13 Clark County were not produced by an accurate counting of votes. Exhibit 8, ¶ 5. Dr. Allen goes  
14 on to provide his own separate analysis from Solomon to support his opinion. Ex. 8, ¶¶ 7-9.

15 15. The initial sentence of paragraph 14 of Defendant's Motion for Sanctions is  
16 opinionated commentary from Defendant's council and not a statement of fact. Defendant  
17 accurately quotes from Dr. Hemmers' report, and from Dr. Allen and Dr. Daugherty's  
18 Declarations that were attached to the Statement of Contest. See Exhibit 1 (on file).

19 16. Contestant attaches for the Court's review, the "Clark County 2022, Governor  
20 Primary Precinct Analysis; Summary" that was prepared by Edward Soloman, and which was  
21 sent to Contestant experts, Drs. Hemmers, Allen and Daugherty, and as referenced in the  
22 Statement of Contest. See Exhibit 10, Solomon Report; Exhibit 1. As is clear from any view of  
23 Mr. Soloman's work, it is quite complex, but Mr. Soloman identifies from his mathematical  
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1 computation a dependency of mail-in ballots in Clark County, Nevada that cannot exist in a fair  
2 election. Exhibit 10.

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4 17. As shown, each expert retained by the Contestant was hired to review Mr.  
5 Solomon's work, and independently confirm through their own analysis whether Mr. Solomon's  
6 conclusion (that mail-in ballots could be mathematically calculated from just knowing the count  
7 of the other ballots, and therefore, predictable, dependent, and artificially contrived), was  
8 correct. See above, paragraphs 11-14. Given the complexity and variations in notation used by  
9 Mr. Solomon, it was reasonable and prudent for Contestant's experts to have communications  
10 with Mr. Solomon, but these discussions were not extensive, and Defendant has not established  
11 that they were by anything he cites in the record. Mr. Solomon was not retained as an expert in  
12 this Contest. He was an independent individual; not under the control of either Contestant or his  
13 attorneys. See "Contestant's Memorandum of Points and Authorities in Support Why Edward  
14 Solomon is not Being Called as a Witness", dated July 26, 2022 (on file). The fact that Mr.  
15 Solomon took it upon himself to contact experts of the Defendant is solely the actions of Mr.  
16 Solomon, and is unrelated to either the Contestant, the Contestant's attorneys, or the Contest  
17 itself. There is nothing in the record to support the Defendant's statement that counsel for  
18 Contestant identified that Mr. Solomon was doing any further analysis of Washoe County,  
19 doing any analysis for the Contestant, or preparing a 394-page "Rebuttal and Challenges" report  
20 for Contestant. This is opinion, commentary, or argument, and not fact. A review of the email  
21 string cited as Exhibit G to Defendant's Motion for Sanctions does not establish involvement of  
22 Mr. Solomon beyond being receptive to answering questions regarding the initial report that  
23 Contestant experts were reviewing. Mr. Solomon was never part of Contestant's litigation team,  
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1 and the referenced email string does not establish that he ever was. See Exhibit G, Defendant's  
2 Motion for Sanctions.

3 18. Contestant Gilbert filed his Statement of Contest based on three experts; the  
4 report of Dr. Hemmers, and Declarations of Drs. Allen and Daugherty which showed a  
5 mathematical and geometric impossibility as it related to the relationship between election  
6 day/early votes and mail-in votes. Exhibit 1, Statement of Contest, pg. 7-12 (on file). Having  
7 shown that the mail-in vote count could not have been the result of an actual count of votes, but  
8 rather determined as a dependent calculation based on election day/early votes, a restoration of  
9 the vote can be accomplished. *Id.*, pg. 12-15.

10 19. Contestant's Statement of Contest is clear that the basis for the Contest is that the  
11 mail-in vote count in each precinct in Clark County for the 2022 Republican gubernatorial  
12 Primary can be mathematically determined based solely on vote counts for election day and  
13 early votes and that this is an impossibility if the mail-in count was an actual count of votes as  
14 opposed to an artificial determination; thus establishing that the mail-in vote count was  
15 corrupted. Exhibit 1, pg. 8-12; see also pgs. 15-23. The assumption made in paragraph 28 of the  
16 Statement of Contest, although an arguable point among Contestant and Defendant, is not a  
17 determinative factor of the mathematical calculations showing a dependency of mail-in votes to  
18 election day/early votes. If one can calculate mail-in votes in every precinct solely based on  
19 election day/early votes, the mail-in vote count is corrupted, flawed, not reasonable, not  
20 possible, and "absolutely suspect". Exhibit 2, Dep. Tr. Wlaschin, pg. 57-59; Exhibit 3, Dep. Tr.  
21 Gloria, pg. 31-33.

22 20. As stated in the Statement of Contest a "remedy is applied to restore election  
23 results in a manner that would most reflect what the results would have been without geometric  
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1 interference.” Ex. 1, Statement of Contest (on file), ¶ 36. Contestant claims that there is a  
2 statistical way to correct the irregularity in the election results in the form of a restoration; one  
3 remedy importing statistical trends expected in a fair election that the election day, early, mail-  
4 in percentages when plotted in 3D space will form an elliptical cloud (blimp shape) as opposed  
5 to a plane that illustrates dependence; as the mail-in votes can be currently plotted. *Id.*,  
6 Statement of Contest (on file), ¶¶ 38-48. Or, by an algorithm discussed by Dr. Hemmers as used  
7 to restore the 2020 election in Washoe County (as identified in *Baker v. Hartung*). *Id.*,  
8 Statement of Contest (on file), ¶¶ 51. Or, use of a statistical analysis as described in the  
9 Statement of Contest, ¶ 63.

12 21. Drs. Hemmer, Allen, and Daugherity were independently retained to review Mr.  
13 Solomon’s math and mathematical conclusion, to provide their own analysis regarding  
14 Solomon’s math, determine if the mail-in vote was contrived and corrupted, if this significantly  
15 affected the election, and provide their opinions on restoration of the election. The analysis by  
16 the three experts was provided in the form of Dr. Hemmer’s initial report, and the Declarations  
17 of Drs. Allen and Daugherity, and provided to both Contestant and Contestant’s counsel before  
18 the filing of the Statement of Contest on July 15, 2022. See Exhibit 1.

20 22. The initial Declaration of Dr. Allen, as provided to Contestant and Contestant’s  
21 Counsel stated that “G DONALD ALLEN declares, under penalty of perjury, that the following  
22 is true and correct.” ...; that “5. In my expert opinion, these reports (the Solomon Report)  
23 demonstrate clear and convincing evidence that the election results analyzed in these reports  
24 were not produced by accurate counting of the votes cast, but were instead artificially contrived  
25 according to a predetermined plan or algorithm.” Exhibit 8, initial Declaration of Expert G.  
26 Donald Allen. Dr. Allen then produced for Contestant and Contestant’s Counsel, a revised  
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1 Declaration in which the same verbatim language cited above is used by Dr. Allen. Exhibit 11,  
2 revised Declaration of Expert G. Donald Allen, initial line, ¶ 5. In the initial Declaration of Dr.  
3 Allen, he employs alternative algorithmic mathematical computations from what appears in  
4 Solomon's Report, states that "In each of these cases, the algorithmic is clear and essentially  
5 proved" (¶ 10), and then illustrates how calculations could occur to correct the flawed result.  
6 Exhibit 8, ¶¶ 6-12. In the revised Declaration of Dr. Allen drafted days before his deposition,  
7 Dr. Allen repeats this analysis but adds beginning in paragraph 13, that the previous approach  
8 failed to determine anomalies, but that he is now applying nonlinear transformations to the  
9 voting records and then performing a standard regression analysis. Exhibit 11, ¶¶ 13-15; Exhibit  
10 12, Deposition Transcript of G. Donald Allen, Ph.D., pg. 36. In Dr. Allen's revised Declaration,  
11 based on his own analysis, he finds an "apparent dependence" with the vote counts; the same as  
12 reported by Dr. Daugherty. Ex. 11, ¶ 16; Ex. 12, Dep. Tr. Allen, pg. 48. It was not until his  
13 deposition on July 27, 2022 that Dr. Allen reversed statements from his Declarations, stating  
14 that that his basis for finding "clear and convincing evidence" came from reading Solomon's  
15 Report and the spreadsheet of Dr. Daugherty confirming by observation what Solomon had  
16 done. Ex. 12, Dep. Tr. Allen, pg. 49-50. As stated by Defendant, all of the revisions by Dr.  
17 Allen that changed his Declaration occurred in and around his deposition of July 27, 2022. See  
18 Defendant's Motion for Sanctions, footnotes 26, 27.

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23 23. Dr. Allen was retained and disclosed as a mathematician to review the  
24 mathematical work of Mr. Solomon. He then opined in his Declaration, under penalty of  
25 perjury, that Solomon's reports demonstrate "clear and convincing evidence" that the election  
26 results were not produced by accurate counting of the votes, but were instead artificially  
27 contrived. Exhibit 8, initial Declaration of Allen ¶ 4, 5. Dr. Allen then states in his Declaration  
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1 that his simplifying the calculations of Mr. Solomon, provides his own algorithmic formulas,  
2 and describes how this manipulation occurred in the 2022 Republican Gubernatorial Primary,  
3 and is “clear and essentially proved.” Ex. 8, ¶¶ 6-12. To the extent, Dr. Allen changed his  
4 Declaration, he did so at his deposition.  
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6 The Declaration of Expert Walter C. Daugherty, as attached to Contestant’s Statement  
7 of Contest, is dated July 14, 2022; it states “7. In my expert opinion these reports  
8 overwhelmingly demonstrate clear and convincing evidence that the election results analyzed in  
9 these reports were not produced by accurate counting of the votes cast, but were instead  
10 artificially contrived according to a predetermined plan or algorithm.” See Exhibit 1, Statement  
11 of Contest (on file); Exhibit 6, ¶ 7. On the eve of Dr. Daugherty’s deposition taken on July 29,  
12 2022, Dr. Daugherty produced a First Amended Declaration of Expert Walter C. Daugherty;  
13 stating now in paragraph 8, “In my expert opinion these Solomon reports overwhelmingly  
14 demonstrate clear and convincing evidence that the official results, analyzed in these Solomon  
15 reports, were not produced by accurate counting of the votes cast, but were instead artificially  
16 contrived according to a predetermined plan or algorithm.” Exhibit 13, First Amended  
17 Declaration of Expert Walter C. Daugherty, ¶ 8. Dr. Daugherty did not mirror Mr. Solomon’s  
18 mathematical analysis and assumptions, but instead conducted his own mathematical analysis  
19 using his own formulas and graphs that showed an improper dependence of Lombardo’s mail-in  
20 vote count on the early in-person vote count and Gilbert mail-in vote count; that Lombardo’s  
21 recorded mail-in vote count can be calculated without counting the votes. Ex. 13, ¶¶ 21; Exhibit  
22 14, Deposition Transcript of Dr. Walter C. Daugherty, pg. 68-70.  
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26 24. Statements made in paragraph 24 of Defendant’s Motion for Sanctions are not  
27 correct and are solely argument, and not a statement of fact. Mr. Mueller conducted examination  
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1 of all experts; See Ex. 5, Dep. Tr. Hemmers, pgs. 73-86; Ex. 12, Dep. Tr. Allen, pg. 120-130;  
2 Ex. 14, Dep. Tr. Daugherty, pgs. 80-91. However, because of the condensed time for discovery,  
3 Contestant's experts were deposed before Contestant received Defendant's expert reports, and  
4 before the depositions of Defendant's experts were taken. As such, Contestant's Counsel could  
5 not examine his own expert's opinions to challenge and explain the errors and inaccuracies of  
6 Defense experts' comments. See Contestant's Motion for Leave to Conduct Depositions  
7 Pursuant to NRCP 30 dtd August 4, 2022 (on file), pgs. 2-3. Contestant filed its motion on or  
8 about August 4, 2022 seeking to depose his own experts. This Motion was denied by the Court  
9 on August 8 2022. On August 5, 2022, the Court entered its Order setting the case for "Bench  
10 Trial" on August 12, 2022.

11 **[NOTE: Regarding Dr. Herron's opinions it should be recognized by the Court that**  
12 **Contestant Gilbert's experts were not provided the report of Dr. Herron before they were**  
13 **deposed, and Gilbert was not allowed to depose his own experts after Herron's report was**  
14 **received and after deposing Dr. Herron to allow Gilbert the opportunity to rebut any of**  
15 **the opinions and testimony given by Dr. Herron or explain why Dr. Herron's analysis was**  
16 **flawed.]**

17 25. Defendant Lombardo hired Dr. Michael Herron and Dr. Justin Grimmer as experts  
18 for the defense.

19 26. Dr. Herron is a political science expert who approaches election contests purely  
20 from a political historical perspective and not through a mathematical analysis. Dr. Herron  
21 admitted he did no mathematical analysis on either Mr. Solomon's reports, or the mathematical  
22 analyses by Drs. Hemmers, Allen, and Daugherty. He simply concluded that he saw nothing  
23 improper with the election, and therefore felt he did not need to address the main argument of  
24 the Contest; that the Lombardo mail-in vote count was not an actual count of votes but was  
25 artificial and contrived because it could be calculated from in-person votes, and Gilbert mail-in  
26 votes.  
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1           27. Contestant initially felt there was an existing conflict involving Dr. Herron, but  
2 upon further review, agreed no conflict existed, and as stated by Defendant, “quickly” withdrew  
3 the objection (within hours of raising it). Clearly, Dr. Herron was allowed to work on behalf of  
4 the Defendant in this Contest.  
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6           28. Dr. Herron performed his duties as an expert hired by Defendant Lombardo; that  
7 is to evaluate the Contest to determine if there were irregularities in election day/early voting  
8 and mail-in ballot vote shares in the 2022 Republican Primary. Exhibit 15, Deposition  
9 Transcript of Michael C. Herron, Ph.D., pgs. 4-5. However, Dr. Herron never addresses the  
10 basis of the election contest; the improper predictability of Lombardo mail-in votes by use of a  
11 mathematical formula such that the mail-in count was artificially created. Ex. 15, Dep. Tr.  
12 Herron, pgs. 18-20. Dr. Herron creates his own fundamental premise of the Contest (that in  
13 “fair” elections candidate vote shares are equal across methods of voting) which is not in any  
14 way stated in the Contest or in any way the basis for the Contest. Ex. 15, Dep. Tr. Herron, pg.  
15 49; Exhibit 16, Expert Report of Michael C. Herron, PhD, pg. 3, ¶ 6. Dr. Herron then takes his  
16 own fundamental premise and provides analysis to dispute that premise; even when he admits to  
17 understanding the basis of the Contest was a mathematical challenge to the Lombardo mail-in  
18 vote count.  
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21           Q. Well let me ask you a question. You do – are you aware that we have three  
22 mathematicians who asserted that the mail-in tallies are a result of a formula  
23 rather than actual tabulation of votes cast, are you aware of that?  
24

25           THE WITNESS: I am aware that the appendices of the contest written by these  
26 individuals say something like that. I have also looked at in particular the  
27 deposition transcript of Mr. Allen and – or Dr. Allen, excuse me, and I’m not sure  
28 exactly how to reconcile that transcript with certain things that he – that he wrote.  
And I believe that one of the individuals was a physicist and not a math  
mathematician but I would have to double-check, look at their vitae to confirm.

1 So I'm answering your question by saying that those individuals did make  
2 assertions consistent with what you're describing.

3 Ex. 15, Dep. Tr. Herron, pgs. 19-20. See also Ex. 16, pg. 11, ¶ 27.

4 29. Dr. Herron analyzed the election data for irregularities as he defines that term;  
5 "... for me and the way I've used it and the way I believe other scholars use it in the literature,  
6 an irregularity is a documented discrepancy between election data, a particular type of election  
7 data could be candidate vote shares, could be undervote rates. A discrepancy between that and  
8 historical data conceivably contemporaneous data or data that is very much at odds with what  
9 one would expect based on some other underlying theory of say voter behavior." Ex. 15, Dep.  
10 Tr. Herron, pg. 31. Based on this definition, Dr. Herron found no irregularities in the 2020  
11 Republican Primary, but again never addressed the basis of the Contest; the math that shows  
12 artificial mail-in votes for Lombardo, finding that analysis to be moot given his conclusion,  
13 based on his own definition, that there was nothing irregular with the election vote shares. Ex.  
14 15, Dep. Tr. Herron, pg. 75, 105; Ex. 16, pg. 47, ¶ 135.

15 30. Again, Dr. Herron does not analyze the Contest's claim that because a  
16 mathematical formula exists to accurately determine Lombardo mail-in vote count in every  
17 precinct in Clark County, this vote count had to be artificially created, was an improper count,  
18 and makes the mail-in vote count contrived, corrupted, and suspect. Ex. 15, Dep. Tr. Herron, pg.  
19 48.

20 31. The Motion for Sanctions provides what Dr. Herron did in his analysis, but as  
21 established, Dr. Herron did no analysis regarding Contestant's claim regarding Lombardo mail-  
22 in votes and their mathematical predictability. See Exhibit 1, Statement of Contest (on file).

23 32. Dr. Herron's analysis of Arizona elections is not relevant to Contest claim that  
24 Lombardo mail-in votes were artificially contrived and therefore corrupted. Exhibit 1.  
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1           33. Dr. Hemmer's opinions dispute that of Dr. Herron, based on his own  
2 mathematical analysis, where he reaches his conclusion that the 2012 election did not show the  
3 flaws he identified for the 2022 Republican Primary; namely that the election results over  
4 methods of voting were not independent but in fact showed a dependency that would be  
5 statistically impossible without election tampering. Exhibit 17, Amended Report of Dr. Oliver  
6 Hemmers dtd August 9, 2022, ¶¶ 6-11; Ex. 5, pgs. 69-71.

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8           34. Again, although Dr. Herron's analysis addresses vote shares, he fails to address  
9 the core issue of the Contest; that mail-in votes for Lombardo are capable of being determined  
10 solely based on a mathematical formula, are dependent and not independent of in-person votes,  
11 and thus evidence a corrupted mail-in vote count.

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13           35. The statements in paragraph 34 of Defendant's Motion for Sanctions are not  
14 relevant to the Contest and the basis for the Contest.

15 **[NOTE: Regarding Dr. Grimmer's opinions it should be recognized by the Court that**  
16 **Contestant Gilbert's experts were not provided the report of Dr. Grimmer before they**  
17 **were deposed, and Gilbert was not allowed to depose his own experts after Grimmer's**  
18 **report was received and after deposing Dr. Grimmer to allow Gilbert the opportunity to**  
19 **rebut any of the opinions and testimony given by Dr. Grimmer or explain why Dr.**  
20 **Grimmer's analysis was flawed.]**

21           36. The statement sets forth accurately Dr. Grimmer's background. He is not a  
22 mathematician but is a political scientist who works in areas of applied statistics and machine  
23 learning.

24           37. Dr. Grimmer acknowledges how difficult it is to make predictions regarding the  
25 outcome of elections; Exhibit 18, Deposition Transcript of Justin Grimmer, pg. 6-8, but stated  
26 that Dr. Daugherity claimed he could predict mail-in ballots in his initial Declaration. *Id.* at pg.  
27 11.





1 not support an award of [attorneys'] fees." *Id.*; *Duff v. Foster*, 885 P.2d 589, 591, 110 Nev.  
2 1306, 1309 (Nev. 1994) (emphasis added).<sup>1</sup> Thus, the court's proper inquiry is whether the  
3 claim was initially brought without reasonable grounds. *Barrozzi v. Benna*, 918 P.2d 301, 303,  
4 112 Nev. 635, 639 (Nev. 1996). See also *Bustos v. Dennis*, Case No. 2:17-cv-0822-KJD-VCF  
5 (D.Nev. July 12, 2021).  
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7 Defendant also attempts to claim that attorney fees should be the responsibility of the  
8 attorney who brought this election Contest. Defendant Lombardo cites to NRS 7.085(1)(a)  
9 and (b) as supportive of their claim. NRS 7.085(1)(a), provides in relevant part:  
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11 [i]f a court finds that an attorney has . . . (a) [f]iled, maintained or defended a civil  
12 action or proceeding in any court in this State and such action or defense is not well-  
grounded in fact or is not warranted by existing law that is made in good faith

13 NRS 7.085(1)(b) provides in relevant part:

14 . . .(b) [u]nreasonably and vexatiously extended a civil action or proceeding before any  
15 court in this State, . . .

16 . . .the court shall require the attorney personally to pay the additional costs, expenses  
17 and attorney's fees reasonably incurred because of such conduct.

18 In addressing NRCP 68 on the issue of awarding attorney fees, a similar analysis was  
19 employed in the Court's discussion regarding the bringing of a good faith claim. As stated by  
20 the Nevada Appellate Court, "[i]t does not matter under this factor that the complaint was  
21 ultimately found to be non-meritorious . . . ". *Harrison v. Ramparts, Inc.*, 500 P.d3d 603, 611  
22 (Nev. App. 2021).("Claims may be unmeritorious and still be brought in good faith.")(citing  
23 *Max Baer Prod. Ltd. v. Riverwood Partners, LLC*, No. 3:09-CV-00512, 2012 WL 5944767,  
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27 <sup>1</sup> *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998), overruled *Duff v. Foster* only to the extent that the  
28 decision in that case did not recognize that attorney fees could be awarded in post-divorce proceedings under NRS  
125.150(3). This case is not a post-divorce proceeding. It does not involve NRS 125.150(3). *Halbrook's* limited  
revision of *Duff* does not apply.

1 \*3 (D. Nev. Nov. 26, 2012); then associated with NRS 7.085 where “(providing that the court  
2 shall sanction an attorney that has brought a case not grounded in fact, not warranted by  
3 existing law, or without a good faith argument for changing the law). *Id.*  
4

5 Contestant and Contestant’s counsel oppose the granting of sanctions as sought by  
6 Defendant in that based on the law allowing for the contest of an election, and the facts as  
7 presented to counsel initially and as developed over the brief course of this contest, Contestant  
8 and Contestant’s counsel had a good faith basis for initiating the law suit, and a good faith  
9 basis for continuing the lawsuit up to the time that Defendant was granted summary judgment  
10 and beyond had the case continued to bench trial. Sanctions are awarded, “for professional  
11 misconduct at trial”, but only if misconduct is found, and only in an amount proportional to  
12 the misconduct. *Emerson v. the Eighth Judicial Dist. Court of State*, 263 P.3d 224, 229-230  
13 (Nev. 2011).  
14

15 **A. Contestant had a sound and good faith legal basis for filing the election**  
16 **contest at the time it was initiated.**

17 The election contest was filed pursuant to NRS 293.410(2) which provides the  
18 following:  
19

20 (2) An election may be contested upon any of the following grounds:

- 21 (a) That the election board or any member thereof was guilty of  
22 malfeasance.  
23 (b) That a person who has been declared elected to an office was not at the  
24 time of election eligible to that office.  
25 (c) That:  
26 (1) Illegal or improper votes were cast and counted;  
27 (2) Legal and proper votes were not counted; or  
28 (3) A combination of the circumstances described in subparagraphs (1)  
and (2) occurred, in an amount that is equal to or greater than the margin  
between the contestant and the defendant, or otherwise in an amount  
sufficient to raise reasonable doubt as to the outcome of the election.

- 1 (d) That the election board, in conducting the election or in canvassing the
- 2 returns, made errors sufficient to change the result of the election as to
- 3 any person who has been declared elected.
- 4 (e) That the defendant or any person acting, either directly or indirectly, on
- 5 behalf of the defendant has given, or offered to give, to any person
- 6 anything of value for the purpose of manipulating or altering the
- 7 outcome of the election.
- 8 (f) That there was a malfunction of any voting device or electronic
- 9 tabulator, counting device or computer in a manner sufficient to raise
- 10 reasonable doubt as to the outcome of the election.

11 NRS 293.410; Ex. 1, Statement of Contest (on file), ¶ 18.

12 Contestant proceeded with this action specifically under NRS 293.410 section (2)

13 subsections (a), (c), (d), and (f). Exhibit 1; Exhibit 19, Transcript of Argument on Defendant’s

14 Motion for Summary Judgment, pgs. 21-25. Defendant does not assert that Contestant Gilbert

15 proceeded under the wrong statutory process, or that NRS 293.410(2)(a)-(f) set forth the

16 incorrect legal grounds for this election process. Had the court found that the election contest

17 had merit, the court could have annulled or set aside the election under NRS 293.417. The

18 legal procedure followed in the contest is not in dispute; nor has Defendant argued that the

19 legal basis for the contest was wrong and not in good faith. The district court has broad

20 discretion to issue sanctions for any “litigation abuses not specifically proscribed by statute.”

21 *Emerson*, 263 P.3d at 229. (citing *Young v. Johnny Ribeiro Building*, 787 P. 2d 777, 779, 106

22 Nev. 88, 92 (1990). But the Defendant does not assert that the Contestant’s action was not

23 under the proper statute, rather the Defendant asserts the basis for Gilbert bringing its suit

24 under NRS 293.410(2) was not well-grounded in fact, or did “unreasonably and vexatiously

25 extend the contest, thus supporting sanctions. See Motion for Sanctions, pg. 24.

26 **B. A review of the facts clearly indicates that Mr. Gilbert’s initial filing of**

27 **election contest was made in good faith, was well-grounded, and supported**

28 **on a number of grounds to challenge the election result under NRS**  
**293.410(2).**

1 In filing the Statement of Contest, Mr. Gilbert relied on the opinions of experts  
2 Hemmers, Allen, and Daugherity. Contestant's counsel had received the report of Mr.  
3 Solomon (Exhibit 10) but did not file the contest based on the claim made by Mr. Soloman.  
4 Mr. Gilbert went out and obtained experts Drs. Allen, and Daugherity, and Mr. Gilbert's  
5 counsel went further and retained expert Dr. Hemmers. Counsel was then provided the  
6 opinions of all three experts *before* filing Mr. Gilbert's contest. Mr. Solomon may have raised  
7 the issue of a mathematical formula that accurately predicted Mr. Lombardo's mail-in vote  
8 count for all precincts, which would be impossible unless the vote count was improper,  
9 suspect, and artificially contrived, but as indicated by each expert, in their initial declarations  
10 and report, they were asked to independently analyze Mr. Solomon's work, and based on their  
11 own analysis, see if there was in fact a formula as claimed by Mr. Solomon. See Ex. 4,  
12 Hemmers report dtd July 2, 2022, pgs. 1, 4 ("requested to provide my expert opinion", that  
13 Solomon's paper "is based on established statistics and statistical analyses and correct in its  
14 described methods", and "evident that a restoration of the 2022 Gubernatorial Primary  
15 election data is necessary in order to correct for obvious major flaws in the original data.");  
16 see Ex. 6, initial Declaration of Expert Walter C. Daugherity dtd July 14, 2022, pgs. 2-7, ¶ 23  
17 (using algebraic formula he derived, he shows that in Clark County the Lombardo mail-in  
18 votes can be determined exactly from knowing the Gilbert in person and mail-in votes and  
19 Lombardo in person votes, that in his opinion this shows clear and convincing evidence that  
20 Lombardo mail-in votes were "not produced by accurate counting of the votes cast, but were  
21 instead artificially contrived", and his opinion that only with the use of manipulated computer  
22 software could this be accomplished); See Ex. 8, initial Declaration Expert G. Donald Allen,  
23 pgs. 1-4, ¶¶ 5, 7("I have reviewed mathematically, the reports of Edward Solomon . . .", using  
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1 his own derived mathematical expression (pg. 3, ¶7), Dr. Allen, in his sworn declaration,  
2 states, “In my expert opinion, these reports demonstrate clear and convincing evidence that  
3 the election results analyzed in these reports were not produced by accurate counting of the  
4 votes case, but were instead artificially contrived according to a predetermined plan or  
5 algorithm.”)

7 Each expert has the qualifications to conduct a mathematical/statistical analysis that  
8 was presented to Contestant and Contestant’s counsel prior to the filing of the election contest.  
9 Dr. Hemmers, a Ph.D. in quantum physics has spent 27 years doing research that requires data  
10 analysis that involves statistical particle distribution and regression analysis that employs  
11 mathematical data interpretation techniques to discern fake data from real data; similar to  
12 what was required to review Solomon’s paper. Ex. 4, pg. 1. Dr. Daugherity has testified as an  
13 expert in election fraud cases, has never had his opinions stricken in an election fraud matter,  
14 is a Senior Lecturer Emeritus in the Department of Computer Science and Engineering at  
15 Texas A&M University, and has taught computer science and engineering courses in artificial  
16 intelligence, expert systems, programming, and quantum computing, among others. His  
17 background not only allows him to approach his analysis from a new direction but gives him  
18 the expertise to opine on manipulative software. Ex. 6, ¶¶ 1-2. Dr. G. Donald Allen is a  
19 Professor Emeritus in the Department of Mathematics at Texas A&M University; taught  
20 mathematics on both graduate and undergraduate levels, has published more than 80 articles  
21 related to operator theory, functional analysis, mathematics education, and political systems,  
22 as well as authored books on linear algebra, history of mathematics, and calculus. Ex. 8, pg. 1.  
23 Each expert retained by Contestant and his counsel have a background to evaluate the claims  
24 made in the Solomon report, derive other methods of showing or illustrating a mathematical  
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1 dependence of Lombardo mail-in votes, and did in fact, opine that such a dependency was  
2 established, and vote count was therefore artificial.

3 When the election contest was filed, experts Hemmers and Allen opined that a  
4 restoration would change the outcome of the election or have a significant impact on the  
5 election. Dr. Hemmers stated, “3) The applied restoration of the official election results shows  
6 a significant difference between original and restored election data for all candidates  
7 reviewed.” Ex. 4, pg. 4. Dr. Allen provided an explanation of how a restoration could be  
8 conducted. Ex. 8, pg. 4 ¶ 12. Contestant experts had not, at this point, conducted a restoration,  
9 but had opined that Lombardo mail-in votes were artificially contrived. Ex. 4, and as  
10 confirmed by Mr. Wlaschin, and Mr. Gloria, that this would be indicative of a flawed election,  
11 would be “absolutely suspect” and would not be reasonable. Exhibit 2, Dep. Tr. Wlaschin,  
12 pgs. 57-59; Exhibit 3, Dep. Tr. Gloria, pgs. 31-33.

13 The establishment of a concluded restoration was not a required element of the election  
14 contest when the election contest was filed. The statute does not require that expert reports be  
15 attached to the election contest. NRS 293.410, “1. A statement of contest shall not be  
16 dismissed by any court for want of form if the grounds of contest are alleged with sufficient  
17 certainty to inform the defendant of the charges the defendant is required to meet.” It was  
18 clear from the contest, and expert reports attached to the contest, that there existed a  
19 mathematical formula that determined the mail-in votes for Lombardo were artificially created  
20 and dependent on the in-person and mail-in votes for Gilbert. Defendant raised no challenge  
21 to the form of the contest as filed.

22 Contestant cited directly to provisions 293.410(2)(d); “(d) That the election board, in  
23 conducting the election or in canvassing the returns, made errors sufficient to change the  
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1 result of the election as to any person who has been declared elected.”, Ex. 1, Statement of  
2 Contest (on file), ¶ 17., and 293.410(2)(f), “That there was a malfunction of any voting device  
3 or electronic tabulator, counting device or computer in a manner sufficient to raise reasonable  
4 doubt as to the outcome of the election.” *Id.*, ¶ 18. Contestant also cited in his contest  
5 subsection (2)(c), “(c) That: (1) illegal or improper votes were cast and counted; (2) Legal and  
6 proper votes were not counted; or (3) A combination of the circumstances described in  
7 paragraphs (1) and (2) occurred, in an amount that is equal to or greater than the margin  
8 between the contestant and defendant, or otherwise in an amount sufficient to raise reasonable  
9 doubt as to the outcome of the election.” *Id.*, ¶ 18. Contestant counsel confirmed that the  
10 Contestant was pursuing his claim under Subsection (2)(c)(3) when questioned by the judge.  
11 Exhibit 19, Tr. Argument to Motion for Summary Judgment, pgs. 24-25. Defendant did not  
12 object to Contestant proceeding under subsection (c)(3).  
13  
14

15 As initiated, the election contest was not frivolous as it was supported by three expert  
16 opinions that a mathematical formula could be used to establish with accuracy that the  
17 mail-in votes for candidate Lombardo showed a dependency on other vote totals when they  
18 should be independent, that this predictability was constant throughout all precincts in Clark  
19 County with countable votes, and that this dependency proved by clear and convincing  
20 evidence that the mail-in vote count for Mr. Lombardo was artificially derived and contrived,  
21 and not from an actual vote count of the voters.  
22  
23

24 Looking at subsection (2)(d), if the claim, as supported by Contestant’s three experts is  
25 correct, and given that two of the three experts opine that a restoration is possible to correct a  
26 corrupted vote count, it was believed by Contestant and Contestant’s counsel, and claimed in  
27 the initial election contest, that significant votes would be shifted to Contestant Gilbert and  
28

1 away from Defendant Lombardo such that the election result would be changed. Ex. 1,  
2 Statement of Contest (on file), pg. 5 ¶ 15; Ex. 4, pg. 4; Ex. 6, pg. 2 ¶ 7; Ex. 8, pg. 2 ¶ 5. To  
3 meet the requirements under the language of subsection 2(d), the Contestant Gilbert and his  
4 counsel made a good faith claim that the election board made errors (that the mail-in vote was  
5 artificially contrived and not an actual count of votes which means the election board failed to  
6 cause an accurate count of the votes), and that it (a restoration when conducted) would show a  
7 change in mail-in ballots sufficient to shift the election to Mr. Gilbert. Ex. 1, Statement of  
8 Contest (on file) pg. 5 ¶ 15, pg. 7 ¶ 20-21, pg. 14 ¶ 48.

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11 Looking at subsection (2)(f), Contestant expert Daugherty swears under penalty of  
12 perjury that only by manipulation of computer software used in the election system could the  
13 Lombardo mail-in votes be artificially contrived, and that hand marked paper ballots should  
14 be used and counted. Ex. 6, pg. 6-7 ¶¶ 22-24. This opinion of Dr. Daugherty is attached to the  
15 Statement of Contest and further identified in the claim. Ex. 1, Statement of Contest (on file),  
16 pg. 6 ¶ 18, pg. 20 ¶ 54. To meet the requirements under the language of subsection 2(f), the  
17 Contestant Gilbert and his counsel made a good faith claim that electronic means by which  
18 votes were tabulated is incorrect (in error) because Lombardo's mail-in votes should not be  
19 able to be calculated by a mathematical formula to show a dependence of that count on the in  
20 person and Gilbert mail-in votes. Dr. Daugherty specifically opined that there was computer  
21 election vote manipulation. But again, all Contestant's experts opined that this would have a  
22 significant impact on the 2020 Republican Primary result. Ex. 4, pg. 4 ('significant  
23 difference'); Ex. 6, para 22; Ex. 8, pg. 2 ¶ 5. The statutory language that it is only required  
24 that this "raise a reasonable doubt as to the outcome of the election" supports the Contestant  
25 and Contestant's counsel good faith claim since an artificial determination of mail-in ballots  
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1 would be suspect, improper, and unreasonable. Exhibit 2, Dep. Tr. Wlaschin, pgs. 57-59;  
2 Exhibit 3, Dep. Tr. Gloria, pgs. 31-33.

3 Additionally, subsection (2)(c)(3) applies to Contestant's claim in that a showing of  
4 corrupt Lombardo mail-in votes through mathematical analysis supports the strong inference  
5 that the vote count was improper, See Exhibit 2, Dep. Tr. Wlaschin, pgs. 57-59, or did not  
6 make a legal (actual) count of the votes and that the mail-in votes for Lombardo were of such  
7 an "amount to raise a reasonable doubt as to the outcome of the election." NRS  
8 293.410(2)(c)(3).  
9

10 Again, the standard under the statute is not that a restoration calculation has to be done  
11 at the time of the initial filing of the contest; the standard is that it must affect a sufficient  
12 amount of votes and raise a reasonable doubt as to the outcome of the election. At the time the  
13 initial contest was made, it was believed by Contestant and Contestant's counsel that a  
14 restoration would shift a significant number of votes to Gilbert and change the outcome of the  
15 election. Thus, the initial filing of the contest *does* show a good faith basis on the part of  
16 Contestant and Contestant's counsel in the filing of the contest.  
17

18 "[I]f an action is not frivolous when it is initiated, then the fact that it later becomes  
19 frivolous will not support an award of [attorneys'] fees." *Id.*; *Duff v. Foster*, 885 P.2d 589,  
20 591, 110 Nev. 1306, 1309 (Nev. 1994). The initial Statement of Contest was not frivolous.  
21 Under either subsections (2)(c), (d), or (f), based on the expert sworn opinions of Drs.  
22 Hemmer, Allen, and Daugherity, Contestant and Contestant's counsel had a good faith and  
23 grounded basis to file the initial election contest. If not frivolous when filed, attorney fees  
24 cannot be awarded as against the Contestant under NRS 18.010(2)(b). If no attorney's fees  
25 can be awarded under NRS 18.010(2)(b), and the filing of the contest was based on reasonable  
26  
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28

1 grounds (not frivolous) then there are no attorney's fees such that Contestant's counsel would  
2 have to pay that amount. Courts will interpret a statute in harmony with other statutes  
3 whenever possible. *Anthony v. Miller*, 137 Nev. Adv. Op. 25 (Nev. 2021), 488 P.3d 573, 575  
4 (citing *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993 860 P.2d 720, 723 (1993)). If as argued  
5 above, the filing was based on reasonable grounds (not frivolous) no attorney's fee can be  
6 awarded either under NRS 18.010(2)(b) or NRS 7.085(1)(a) (b). To harmonize the two  
7 statutes, if attorney fees are not warranted under NRS 18.010(2)(b), then they should not be  
8 awarded under NRS 7.085(1)(a) or (b). Where no attorney fee is warranted under the  
9 standards of NRS 18.010(2)(b) that means that the case was brought based on reasonable  
10 grounds and not to harass the prevailing party. Defendant has produced no facts which  
11 indicate the election contest was filed to harass Mr. Lombardo, and Contestant has discussed  
12 previously how it was reasonable given the information they had to file the contest. The  
13 second part under *Duff, supra*, is that if at a later point in the contest things take a negative  
14 turn for the Contestant ("later becomes frivolous") Nevada law does not support the award of  
15 attorney fees at that point. *Duff*, 885 P.2d at 591. If the law does not support the awarding of  
16 attorney fees against the Contestant based on the election contest as drafted and brought by  
17 Contestant's counsel, you cannot harmonize the two statutes if the Court awards attorney fees  
18 as against Contestant's counsel under NRS 7.085(a) or (b).  
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22

23 Defendant will argue that NRS 7.085 (a) and (b) support the awarding of attorney fees  
24 because at some point in the election contest, the Contestant no longer had a good faith basis  
25 to maintain the contest. So, if the contest violates subsection (a) that requires the court to hold  
26 the contest was maintained without well-grounded fact or under existing law, or (b) where  
27 Contestant unreasonably extended the action, then Defendant will argue that attorney fees  
28

1 should be awarded as against Contestant's counsel. Contestant and Contestant's counsel  
2 dispute this position and assert that they always had a good faith basis to proceed with the  
3 election contest throughout this process.  
4

5 As noted previously, Defendant does not challenge the law (NRS 293.410) under  
6 which Contestant brought this action. Defendant asserts that the Contestant did not have well-  
7 grounded facts to either file or maintain the contest, but the Defendant points directly to the  
8 depositions of Contestant's experts to make this argument *and does not point to the initial*  
9 *fling of the contest*. Dr. Allen's deposition was taken on July 27, 2022; Dr. Hemmers'  
10 deposition was taken on July 28, 2022; Dr. Daugherity's was taken on July 29, 2022. The  
11 Defendant sent a letter dated July 27, 2022, to Contestant's counsel, Mr. Mueller, claiming  
12 solely because of the deposition of Dr. Allen, the Contestant could no longer maintain his  
13 contest. Exhibit 20, Demand to Withdraw Statement of Contest.  
14

15 It should be noted that Defendant tacitly admits that up to the point of Dr. Allen's  
16 deposition on July 27, 2022, Contestant could maintain his contest. Ex. 20. It should also be  
17 noted two other things that Defendant did not do; 1) following the depositions of Contestant's  
18 other experts, Defendant did not send a similar letter to address any faults in the other experts'  
19 testimony; and 2) Defendant has never filed in the contest a motion to strike Contestant's  
20 experts to disqualify them from giving testimony. Defendant has made side bar comments  
21 about the use of Drs. Daugherity and Hemmers, but not a motion where he actually would  
22 have to put together a cogent argument to strike those experts and then defend the response  
23 from the Contestant. This is relevant because even if Dr. Allen changed his testimony, the  
24 Contestant can still rely on the opinions of both Hemmers and Daugherity, and although  
25 admittedly Dr. Allen changed his opinions from his initial and second declarations, and  
26  
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28

1 certainly made Contestant's claim more difficult, it did not eliminate the claim. See  
2 Declaration of Craig A. Mueller, Esq., attached hereto.

3 Contestant was not given the opportunity to rebut the opinions of Defendant's experts  
4 whose reports and opinions were only made available after Defendant had taken Contestant's  
5 experts' depositions.  
6

7 During Defendant's hearing on his Motion for Summary Judgment, Defendant stated that  
8 whether there's a dispute on the math or not is not a genuine issue of fact that prevents summary  
9 judgment. He agrees there is a problem with the math. But at no time does he say what the  
10 problem is or propose alternative mathematical solutions. It is easy to look at something and not  
11 like it, quite another to make that "something" different. So, too, here: for purposes of his  
12 Motion, Defendant accepts the math as set forth in the Contest and moves on to the issue of  
13 restoration of the corrected vote based on the math he objects to but has made no argument  
14 against, either by his experts or in any pleading. Defendant makes no effort, good faith or  
15 otherwise to point out the fault he finds with Contestant's math. For the Defendant, there is no  
16 issue whether the Contest was brought without ground, only that he disagreed with the result of  
17 the basis. Contestant was entitled to rely on the opinions of three well-credentialed experts  
18 regarding the mathematics and the probability of a restoration of the true vote.  
19

20  
21 For the Defendant, unable or unwilling to dispute the mathematics, the issue then  
22 becomes one of restoration of the vote. Yet, in each of Contestant's experts' report and  
23 declarations, the issue of restoration *is* addressed. Dr. Hemmers independently reviewed the  
24 restoration process and determined that it would, at minimum, raise reasonable doubt as to the  
25 outcome of the election. See Exhibit 4. Dr. Allen sets out how he would perform the restoration  
26 in his Declaration filed with the Statement of Contest. See Exhibit 8. Dr. Daugherty  
27  
28

1 determined, based on his own mathematical analysis, that mail-in votes for candidate Lombardo  
2 were dependent on other vote totals when they should be independent, as in a fair and honest  
3 election; that this predictability was constant throughout all precincts in Clark County with  
4 countable votes; and that this dependency and predictability demonstrated by clear and  
5 convincing evidence that the election results were not produced by an accurate counting of  
6 votes, and were instead, artificially contrived. See Exhibit 7. Dr. Daugherity had testified as an  
7 expert in other election fraud cases and never had his opinions stricken or deemed unreliable in  
8 election fraud cases.  
9

10  
11 Again, Dr. Herron mischaracterizes the fundamental assumption of the Contestant's  
12 assertion erroneously claiming in "fair" elections candidate vote shares are equal across  
13 methods of voting. which is not in any way stated in the Contest or in any way the basis for the  
14 Contest. Ex. 15, Dep. Tr. Herron, pg. 49; Exhibit 16, Expert Report of Michael C. Herron, PhD,  
15 pg. 3, ¶ 6. Dr. Herron then takes his own fundamental premise and provides analysis to dispute  
16 that premise; even when he admits to understanding the basis of the Contestant's mathematical  
17 challenge to the Lombardo mail-in vote count. Also not alleged in the contest is fraud. Yet, Dr.  
18 Grimmer looked for evidence of fraud. See Ex. 1, Statement of Contest (on file).  
19

#### 20 IV.

#### 21 CONCLUSION

22  
23 It cannot reasonably be argued that the Statement of Contest was frivolous or not well  
24 grounded in fact or law when initiated Under NRS 293,410 (2)(c), (d), or (f), based on the  
25 expert sworn opinions of Drs. Hemmer, Allen, and Daugherity, Contestant and Contestant's  
26 counsel had a good faith and grounded basis to file the initial election contest. If not frivolous  
27 when filed, attorney fees cannot be awarded as against the Contestant under NRS  
28


1 18.010(2)(b). And, if no attorney's fees can be awarded under NRS 18.010(2)(b), and the  
2 filing of the contest was based on reasonable grounds (not frivolous) then there are no  
3 attorney's fees such that Contestant's counsel would have to pay that amount.  
4

5 As for any argument that Contestant or Contestant's counsel should have  
6 withdrawn the contest after receipt of counsel's letter on July 27, 2022, Ex. 20, that claim also  
7 is without merit. Contestant had experts Hemmers and Daugherity, whose depositions were  
8 taken after Dr. Allen's. There was no reason to believe that the contest should not proceed  
9 despite Allen's statements at deposition as the contest did not rely entirely upon Allen's  
10 singular report. Expert Hemmers and Daugherity testified after Allen's deposition that the  
11 case had merit, particularly Dr. Daugherity, who determined, based on his own independent  
12 mathematical analysis, that mail-in votes for Lombardo were dependent on other vote totals  
13 when they should be independent, that this predictability was constant throughout all precincts  
14 in Clark County with countable votes, and that this dependency and predictability  
15 demonstrated *by clear and convincing evidence* that the election results were not produced by  
16 an accurate counting of votes, and were instead, artificially contrived. See Exhibit 6, initial  
17 Declaration Daugherity, ¶¶ 6, 10-17, 22; Declaration of Craig A. Mueller, Esq., attached  
18 hereto. Considering the testimony of Hemmers and Daugherity that the action could and  
19 should proceed, there was every reason to continue with the contest even after Allen's  
20 deposition. Even though Dr. Allen may have changed his testimony, a fact completely  
21 unknown to Contestant or Contestant's counsel prior to Allen's deposition, the Contestant can  
22 still rely in good faith upon the qualified opinions of Hemmers and Daugherity. Dr. Allen's  
23 statements did not eliminate the claim.  
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1 Simply stated, there was a good faith basis well-grounded in law and fact to bring the  
2 contest on July 15<sup>th</sup> and there was a good faith basis to maintain the contest after July 27<sup>th</sup>. For  
3 the reasons set forth herein, Defendant's motion should be denied.  
4

5 DATED this 2<sup>nd</sup> day of September 2022.

6 **MUELLER & ASSOCIATES, INC.**

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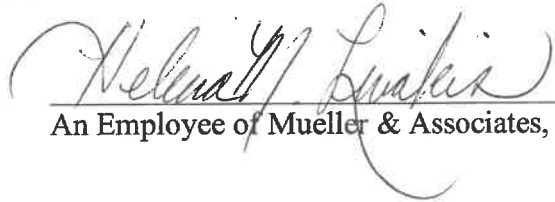
CRAIG A. MUELLER, ESQ.  
10 Nevada Bar No. 4703  
11 808 S. 7<sup>th</sup> Street  
12 Las Vegas, Nevada 89101  
13 *Counsel for Contestant, Joey Gilbert*  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the service of the foregoing **CONTESTANT'S OPPOSITION TO DEFENDANT'S MOTION FOR SANCTIONS** was served on the 2<sup>nd</sup> day of September, 2022 via email to all parties on the e-service list as follows:

- CAMPBELL & WILLIAMS
- DONALD J. CAMPBELL, ESQ. (1216)
- [djc@cwlawlv.com](mailto:djc@cwlawlv.com)
- J. COLBY WILLIAMS, ESQ. (5549)
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- PHILIP R. ERWIN, ESQ. (11662)
- [pre@cwlawlv.com](mailto:pre@cwlawlv.com)
- SAMUEL R. MIRKOVICH, ESQ. (11662)
- [srm@cwlawlv.com](mailto:srm@cwlawlv.com)
- Attorneys for Defendant Joseph Lombardo

  
 \_\_\_\_\_  
 An Employee of Mueller & Associates, Inc.



**DECLARATION OF CRAIG A. MUELLER, ESQ.**

I, CRAIG A. MUELLER, ESQ., hereby declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada. I am the owner of Mueller & Associates, Inc. Everything in this Declaration is true and correct to the best of my knowledge.

2. I am the attorney of record for the Contestant, JOEY GILBERT (“Contestant”), in this case and am making this declaration based upon my own personal knowledge.

3. Defendant, Joseph Lombardo (“Lombardo”) has filed a Motion for Sanctions against Contestant in which it is argued that Contestant and Contestant’s counsel should be sanctions for bringing the contest in the first place and in maintaining the contest after July 27, 2022, when Defendant sent his letter to the undersigned following the deposition of Dr. G. Donald Allen where Dr. Allen’s testimony appeared to contradict opinions he had made only days earlier in a sworn Declaration (see Ex. 11).

4. Dr. Allen’s deposition was taken on Wednesday, July 27, 2022. In his revised Declaration, provided to me only a few days prior to his deposition, Dr. Allen states under penalty of perjury that, “In my expert opinion, these reports demonstrate clear and convincing evidence that the election results analyzed in these reports were not produced by accurate counting of the votes cast, but were instead artificially contrived according to a predetermined plan or algorithm.” See Revised Report of G. Donald Allen, Ex. 11, ¶ 5. Contestant and I had good cause leading up to Dr. Allen’s deposition to rely upon the opinions asserted in Dr. Allen’s revised report; at no time prior to his deposition did Dr. Allen advise that his the opinions of his revised report would change.

5. Further, two other experts retained by Contestant in this case, Drs. Daugherty and

1 Hemmers, were deposed *after* Dr. Allen. At deposition, both stood by the opinions stated in  
2 their respective reports. After performing his own independent calculations, Dr. Daugherity  
3 stated, “In my expert opinion the foregoing calculations overwhelmingly demonstrate clear and  
4 convincing evidence that all of the election results analyzed above were not produced by  
5 accurate counting of the votes cast, but were instead artificially contrived according to the same  
6 (or a very similar) predetermined plan or algorithm.” See Ex. 13, ¶ 24. Dr. Hemmers and Dr.  
7 Daugherity’s opinions did not change at deposition, nor did Defendant communicate to the  
8 undersigned any fault on the part of either Hemmers or Daugherity after their respective  
9 depositions.  
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12 6. The contest was initially filed in good faith and well-grounded in law and fact  
13 (and Defendant’s counsel tacitly admits that up to the point of Dr. Allen’s deposition on July 27,  
14 2022, Contestant could maintain his contest. See Ex. 20) and was, in my belief, even after Dr.  
15 Allen’s deposition, based upon the opinions of Hemmers and Daugherity, maintained in good  
16 faith and well-grounded in law and fact, through the hearing on Defendant’s Motion for  
17 Summary Judgment.  
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19 7. In fact, Defendant’s Motion for Summary Judgment filed on August 1, 2022, does  
20 not attack any opinion of either Drs. Hemmers and Daugherity save to claim that these experts  
21 were “vouching” for Ed Solomon. By the time of the hearing on Defendant’s Motion for  
22 Summary Judgment on August 10, the Court had made no ruling on whether Contestant’s  
23 experts were doing independent work (as conceded by Defendant in his Motion for Summary  
24 Judgment, pg. 3:1-3 “”), and my belief, as expressed by Contestant’s experts Allen and  
25 Daugherity, was that these experts were using separate algebraic formulas independent of Mr.  
26 Solomon’s math.  
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8. There was, therefore, a good faith basis to bring and maintain the contest through the hearing on Defendant’s Motion for Summary Judgment.

9. It was reasonable for Contestant and I to rely upon the opinions of both Hemmers and Daugherity, even after Dr. Allen’s deposition, and to continue the contest, particularly in light of the fact that Contestant was denied any opportunity to rebut the opinions of Defendant’s experts, whose reports and opinions were only made available to Contestant after Defendant had already taken Contestant’s experts’ depositions.

I hereby declare under penalties of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 2<sup>nd</sup> day of September 2022.

  
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**CRAIG A. MUELLER, ESQ.**