

CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
SIDNEY POWELL	§	
(File Nos. 202006349, 202006347,	§	DALLAS COUNTY, TEXAS
202006393, 202006599, 202100006,	§	
202100652, 202101297, 202101300,	§	
202101301, 202103520, 202106068,	§	
202106284, 202106181)	§	
	§	
Defendant.	§	116 th JUDICIAL DISTRICT

**SIDNEY POWELL’S OPPOSITION TO
MOTION FOR RECONSIDERATION AND OR NEW TRIAL**

TO THE HONORABLE ANDREA K. BOURESSA:

Sidney Powell (“Ms. Powell”) files her Opposition to the Commission’s Motion for New Trial and or New Trial (“Motion”) and respectfully shows the Court as follows:

I. PRELIMINARY STATEMENT

The Bar is no different than any other litigant in a civil law suit in Texas. Disciplinary proceedings are civil in nature and are accordingly governed by Texas Rules of Civil Procedure. *Kaufman v. Comm’n for Lawyer Discipline.*, 197 S.W.3d 867, 873 (Tex.App.–Corpus Christi 2006, pet. denied), cert. denied, 552 U.S. 935, 128 S.Ct. 331, 169 L.Ed.2d 233 (2007); *McInnis v. State*, 618 S.W.2d 389, 392 (Tex.Civ.App.–Beaumont 1981, writ ref’d n.r.e.); Tex.R.Disciplinary. P. R. 3.08A and B. Simply put, the Bar must follow and I subject to the Texas Rules of Civil Procedure as any other litigant.

When the undisputed facts lead to but one conclusion, the rules of civil procedure provide

the trial court may grant summary judgment. *Crampton v. Comm'n for Lawyer Discipline*, 545 S.W.3d 593, 606 (Tex. App.–El Paso 2016, pet. denied) (citations omitted).

That is exactly what happened in this case – the Court granted Ms. Powell’ two motions for summary judgment because the undisputed facts before the Court required to Court to enter the Final Summary Judgment. It is based on the law and the undisputable facts presented to the Court by Ms. Powell, and the failure of the Bar to present any evidence tp support its allegations.

Indeed even after two years – since December 1, 2020 – of supposed investigation of the thirteen grievances filed and nine months – since April 1, 2022 – of discovery in this case, the Bar has no evidence Ms. Powell violated any disciplinary rule.

The Traditional Motion for Summary Judgment was on file for almost six months and was continued by agreement three times. Over a period of some five months, with two amended responses filed, after their opportunity to take all the depositions it wanted, and Ms. Powell’s production of over 60,000 pages of documents, the Bar submitted no controverting summary judgment evidence that raised a disputed fact issue.

The No-Evidence Motion was on file for almost sixty days before the Court ruled, specifically stating the essential elements of each claim and the essential elements of each claim for which the Bar had no evidence. The Bar submitted no evidence that raised a genuine issue of material fact on those challenged element so the court was obligated to grant the No-E Motion. Tex.R. Civ. P. 166a(i); *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex.2008) (per curiam); *Boerjan v. Rodriguez*, 436 S.W.3d 307, 310 (Tex. 2014).

The Court’s decisions were correct and should not be rescinded.

II. TIME LINE OF RELEVANT EVENTS

On the following dates, the listed pleadings were filed or hearings scheduled:

March 1, 2022 – *Case Initiated*

July 20, 2022 – *Motion for Summary Judgment (“MSJ”)*

July 27, 2022 – *First Notice of Submission, MSJ, August 16, 2022*

August 8, 2022 – *Bar’s First Motion for Continuance of MSJ*

August 9, 2022 – *Bar’s First Response to MSJ*

August 9, 2022 – *Bar’s First Motion to Compel*

August 16, 2022 – *MSJ Hearing Continued by Agreement*

October 12, 2022 – *Letter Ruling on Motion to Compel*

November 18, 2022 – *Order Granting in Part & Denying in Part Motion to Compel Entered*

November 16, 2022 – *Second Notice of Submission, MSJ, November 28, 2022*

November 21, 2022 – *First Amended Response to MSJ*

November 21, 2022 – *Second Motion for Continuance of MSJ*

November 23, 2022 – *Email to Bar re Compliance with Ruling on Motion to Compel*

November 28, 2022 – *Second MSJ Hearing Continued by Agreement*

December 7, 2022 – *Third Notice of Submission, MSJ, January 13, 2022*

December 28, 2022 – *No-Evidence Motion for Summary Judgment (“No-E Motion”)*

December 28, 2022 – *Notice of Submission, No-E MSJ, January 18, 2023*

January 5, 2023 – *Bar’s Second Amended Response to MSJ*

January 9, 2023 – *Reply to Bar’s Second Amended Response to MSJ*

January 11, 2023 – *Bar’s Second Amended Response to Respondent’s Hybrid Motion for Summary Judgment and Respondent’s No Evidence Motion for Summary Judgment (“Omnibus Amended Response”)*

January 12, 2023 – *Supplemental Reply to Bar’s Response to MSJ*

January 12, 2023 – *Bar’s Second Motion to Compel*

January 13, 2023 – *Second Supplemental Reply to Bar’s Response to MSJ*

January 13, 2023 – *Reply to Response to No-E MSJ*

January 18, 2023 – *Notice of Hearing, Bar’s Second Motion to Compel*, February 22, 2023

January 27, 2023 – *Ms. Powell’s Motion for Continuance of Hearing, Second Motion to Compel*

January 18, 2023 – *Amended Notice of Hearing Date, Bar’s Second Motion to Compel*, February 22, 2023

January 20, 2023 – *Fact Discovery Closed*

January 30, 2023 – *Ms. Powell’s Response, Bar’s Second Motion to Compel*

February 22, 2023 – *Final Summary Judgment Entered*

February 24, 2023 – *Expert Discovery Closed* – with no notices of depositions issued by the Bar

April 24, 2023 – *Trial Date*

III. THE FINAL SUMMARY JUDGMENT WAS RENDERED BASED ON LAW, COMPETENT SUMMARY JUDGMENT EVIDENCE AND ABSENCE OF CONTROVERTING SUMMARY JUDGMENT EVIDENCE

A. THE COURT PROPERLY APPLIED SUMMARY JUDGMENT RULES.

FOR NO-E MSJ’S: “After adequate time for discovery, a party . . . may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim . . . on which an adverse party would have the burden of proof at trial.” Tex. R. Civ. P. 166a(I); *Hamilton*, 249 S.W.3d at 426; *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 79 (Tex. 2015).

The Bar had the entire burden of proof once Ms. Powell filed the No-E MSJ identifying the challenged elements on which the Bar had no evidence. Tex. R. Civ. P. 166a(I); *JLB Builders, L.L.C.*

v. Hernandez, 622 S.W.3d 860, 864 (Tex.2021).

“To defeat a no-evidence motion, the non-movant [Bar] must produce evidence raising a genuine issue of material fact as to the challenged elements.” *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017)); *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). “[T]he nonmovant must file a written response that points out evidence that raises a fact issue on the challenged elements.” *Holloway v. Tex. Elec. Util. Const., Ltd.*, 282 S.W.3d 207, 213 (Tex. App.–Tyler 2009, no pet.). “[I]n response to a no-evidence motion, the respondent must present some summary judgment evidence raising a genuine issue of material fact on the elements attacked, or the motion must be granted.” *Blake v. Intco Invs. of Tex., Inc.*, 123 S.W.3d 521, 525 (Tex. App.–San Antonio 2003, no pet.).

The Bar was required to produce summary judgment evidence, raising a genuine issue of material fact on each of the challenged elements. *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006) (per curiam). The Bar failed to do so; therefore, the Court was required to grant the No-E MSJ. Tex. R. Civ. P. 166a(I); *Sudan*, 199 S.W.3d at 292.

FOR TRADITIONAL MSJ’S: “A party moving for traditional summary judgment meets its burden by proving that there is no genuine issue of material fact and it is entitled to judgment as a matter of law.” *Parker*, 514 S.W.3d at 220 (citing Tex. R. Civ. P. 166a(c); *Cnty. Health Sys. Prof’l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 681 (Tex. 2017)). A summary judgment is proper for a defendant if its summary judgment proof conclusively negates at least one essential element of the plaintiff’s cause of action. *Goldberg v. United States Shoe Corp.*, 775 S.W.2d 751, 752 (Tex.App.–Houston [1st Dist.] 1989, writ denied) (citing *Gardner v. Best W. Intern., Inc.*, 929 S.W.2d 474, 479 (Tex. App.–Texarkana 1996, writ denied)).

The MSJ was on file for over five months supported by competent summary judgment proof, including the declarations of Harry MacDougald and Ms. Powell. The Bar did not file one controverting affidavit or other evidence to raise a disputed fact issue. Therefore, the Bar's response was inadequate. *American 10-Minute Oil Change, Inc. v. Metropolitan Nat'l Bank-Farmers Branch*, 783 S.W.2d 598, 602 (Tex.App.–Dallas 1989, no pet.). The Bar failed to produce one scintilla of evidence to controvert the proof submitted by Ms. Powell, so the Court properly granted the MSJ. *Boerjan*, 436 S.W.3d at 310.

B. THE COURT PROPERLY APPLIED THE RULES FOR AMENDED PLEADINGS.

The Bar's amended pleadings superceded its prior pleadings completely. According to the plain text of the Rules themselves:

“The object of an amendment, as contra-distinguished from a supplemental . . . is to add something to, or withdraw something from, that which has been previously pleader so as to perfect that which is or may be deficient, or to correct that which has been incorrectly stated by the party making the amendment, or to pleads new matter, additional to that formerly pleader by the amending party, which constitutes an additional claim or defense permissible to the suit.”

Tex. R. Civ. P. 62.

“Unless the substituted instrument shall be set aside on exceptions, the instrument for which it is substituted shall no longer be regarded as a part of the pleading in the record of the cause, unless some error of the court in deciding upon the necessity of the amendment, or otherwise in superseding it, be complained of, and exception be taken to the action of the court, or unless it be necessary to look to the superseded pleading upon a question of limitation.”

Tex. R. Civ. P. 65.

“A proper amended pleading supersedes and replaces prior pleadings.” *Mensa-Wilmot v. Smith Int'l, Inc.*, 312 S.W.3d 771, 779 (Tex. App.–Houston [1st Dist.] 2009, no pet.); *FKM P'ship, Ltd. v. Bd. of Regents of Univ. of Hous. Sys.*, 255 S.W.3d 619, 633 (Tex. 2008). This is true whether

the instrument is a motion or pleading. *State v. Seventeen Thousand & No/100 Dollars U.S. Currency*, 809 S.W.2d 637, 639 (Tex.App.–Corpus Christi 1991, no writ) (noting an amended motion for summary judgment “supersedes and supplants the previous motion, which may no longer be considered.”); *Harlan v. Howe State Bank*, No. 05-96-01583-CV, 1999 WL 72619, at *6 (Tex. App.–Dallas Feb. 17, 1999, no pet.); *Radelow–Gittens Real Property Management v. Pamex Foods*, 735 S.W.2d 558, 559 (Tex.App.–Dallas 1987, writ ref’d n.r.e.).

On January 11, 2023, the Bar filed its Omnibus Amended Response. That document was the Bar’s live (only) Response to the MSJ, No-E MSJ and Motion for Continuance, which superseded and replaced the Bar’s prior responses and motions for continuance. *Mensa-Wilmot*, 312 S.W.3d at 779; *FKM P’ship, Ltd.*, 255 S.W.3d at 633; *State v. Seventeen Thousand*, 809 S.W.2d at 639; *Howe State Bank*, No. 05-96-01583-CV, 1999 WL 72619, at *6; *Radelow–Gittens*, 735 S.W.2d at 559.

C. THE COURT CORRECTLY CONSIDERED THE ONLY EVIDENCE BEFORE THE COURT.

On January 11, 2023, the Bar filed the Omnibus Amended Response. Therefore, the only summary judgment evidence before the Court was that attached to the Omnibus Amended Response. *Seventeen Thousand*, 809 S.W.2d at 639; *Howe State Bank*, No. 05-96-01583-CV, 1999 WL 72619, at *6; *FKM P’ ship, Ltd.*, 255 S.W.3d at 633.

While the summary judgment rule clearly allows the trial court to consider the entire record before it to determine whether there is a disputed material issue to be determined by a trier of facts, *Burnett v. Cory Corporation*, 352 S.W.2d 502, 505 (Tex.Civ.App.–Dallas 1961, writ ref’d n.r.e.), that does not include materials which were supercede – they are no longer a part of the record.

Moreover, summary-judgment evidence must be on file at the time of the hearing to be considered by the court. See Tex. R. Civ. P. 166a©; *Lance v. Robinson*, 543 S.W.3d 723, 732

(Tex.2018). “On file” means the evidence was offered and admitted in the trial court. *Lance*, 543 S.W.3d at 732. The motion or response should contain a section called “Summary-Judgment Evidence” identifying the attached documents.

The motion or response must specifically identify the portions of the evidence that the party wants the court to consider. *Gonzales v. Shing Wai Brass & Metal Wares Factory, Ltd.*, 190 S.W.3d 742, 746 (Tex.App.–San Antonio 2005, no pet.). When an entire document, such as a deposition, is attached to a motion or response and is referred to only generally, that reference does not satisfy the requirement for specificity. *Gonzales*, 190 S.W.3d at 746; *Upchurch v. Albear*, 5 S.W.3d 274, 284–85 (Tex.App.–Amarillo 1999, pet. denied).

As a general rule, pleadings are not summary-judgment evidence. *Weekley Homes, LLC v. Paniagua*, 646 S.W.3d 821, 827 (Tex.2022). Actual statements contained in a motion for summary judgment or response are not summary-judgment proof, even if the motion or response is verified. *Quanaim v. Frasco Rest. & Catering*, 17 S.W.3d 30, 42 (Tex.App.–Houston [14th Dist.] 2000, pet. denied); *Barrow v. Jack's Catfish Inn*, 641 S.W.2d 624, 625 (Tex.App.–Corpus Christi 1982, no writ). Other pleadings attached as exhibits to its own motion or response are not summary-judgment evidence, even if the pleadings are verified. *Laidlaw*, 904 S.W.2d at 660–61.

Thus the entire evidentiary record before the Court in response to the MSJ and NO-E MSJ was the Omnibus Amended Response. Moreover, there was no other evidence “on file” in the papers of this case. Therefore, it would have been improper for the Court to have considered any other evidence as controverting summary judgment proof than that attached to Omnibus Amended Response. *Id.* at 505. (trial court was duty bound to consider plaintiff’s last amended original pleadings in full on the hearing for summary judgment).

The Bar, misguidedly, cites *R.I.O. Sys., Inc. v. Union Carbide Corp.*, 780 S.W.2d 489, 492 (Tex. App.–Corpus Christi–Edinburg 1989, writ denied) to support the Motion. However, that case involved evidence attached to denied motion for summary judgment, which left the evidence attached to that motion before the court as proper summary judgment evidence to be considered for a second motion for summary judgment, as opposed to that attached to a response to a summary judgment which had been superceded by amendment. The previous instruments and evidence were no longer before the court, they had been superceded by the Omnibus Amended Response the Bar filed in the case. *Burnett*, 352 S.W.2d 505.

The Bar’s only summary judgment evidence before the Court in this case is that attached to the Omnibus Amended Response. *Id.*

D. THE COURT PROPERLY SUSTAINED OBJECTIONS TO BAR’S EXHIBITS.

The Bar cites *Olsen v. Commission for Lawyer Discipline*, 347 S.W.3d 876, 888 (Tex. App.–Dallas 2011, pet. denied) and *McIntyre v. Commission for Lawyer Discipline*, 169 S.W.3d 803, 806 (Tex. App.–Dallas 2005, pet. denied) for the proposition that a party can rely on pleadings filed in other cases as summary-judgment evidence. Upon review of those case there is nothing to support that position: (I) in *Olsen* the court reviewed a will, not the application for probate; (ii) in *McIntyre*, the court reviewed the transcript of the bankruptcy judge and testimony of the defendant, not the pleadings. Neither case holds that pleadings in other cases are competent summary judgment evidence. *Olsen*, 347 S.W.3d 888; *McIntyre*, 169 S.W.3d 803. A lawsuit involving a disciplinary action is noting more than any other civil suit in Texas courts. *Kaufman*, 197 S.W.3d at 873.

The law is abundantly clear, *Laidlaw Waste Sys. v. City of Wilmer*, 904 S.W.2d 656, 660-61 (Tex.1995) states:

“On balance, we are convinced that orderly judicial administration will be better served in the long run if we refuse to regard pleadings, even if sworn, as summary judgment evidence.... If we took the opposite course, we would be confronted with constant problems concerning whether there was an adequate showing that the person making oath was personally acquainted with the facts and was competent to testify to the facts alleged.”

citing *Hidalgo v. Surety Sav. & Loan Ass’n*, 462 S.W.2d 540, 545 (Tex.1971).

Laidlaw then goes on to state:

“Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.”

citing Tex. R. Civ.P. 166a(f).

The Bar attached bare-bones copies of pleadings to support its opposition – “The statements in the petition are conclusory. They do not set forth facts.” *Laidlaw*, 904 S.W.2d 661.

E. THERE WAS NO VALID MOTION FOR CONTINUANCE BEFORE THE COURT.

If a motion for continuance does not comply with the rules, the appellate court will presume the trial court did not abuse its discretion in denying the motion. *Villegas v. Carter*, 711 S.W.2d 624, 626 (Tex.1986); *In re Marriage of Harrison*, 557 S.W.3d 99, 117 (Tex.App.–Houston [14th Dist.] 2018, pet. denied); see Tex. R. Civ. P. 251 to 254.

The motion must state the specific facts that support it. *Blake v. Lewis*, 886 S.W.2d 404, 409 (Tex.App.–Houston [1st Dist.] 1994, no writ). The facts in the motion must be verified or supported by affidavit. Tex. R. Civ. P. 251, 252; *Taherzadeh v. Ghaleh-Assadi*, 108 S.W.3d 927, 928 (Tex.App.—Dallas 2003, pet. denied).

A party requesting additional time for discovery, whether to obtain evidence or testimony, must fulfill the requirements of Tex.R. Civ.P. 252 under oath. *Verkin v. Southwest Ctr. One, Ltd.*,

784 S.W.2d 92, 94 (Tex.App.–Houston [1st Dist.] 1989, writ denied).

A motion requesting a continuance for additional time to secure affidavits or discovery for a summary-judgment hearing should satisfy all the requirements of both Tex R. Civ. P., 166a(g) and Tex R. Civ. P. 252. *Tenneco Inc. v. Enterprise Prods.*, 925 S.W.2d 640, 647 (Tex.1996); *Kahanek v. Rogers*, 900 S.W.2d 131, 134 (Tex.App.–San Antonio 1995, no writ).

Under Rule 166a(g) the party must:

- allege that it cannot present by affidavits the facts essential to justify its opposition to the motion for summary judgment and that it needs additional time to secure affidavits or conduct discovery. Tex. R. Civ. P. 166a(g); *Joe v. Two Thirty Nine Jt.V.*, 145 S.W.3d 150, 161 (Tex.2004); *Elizondo v. Krist*, 415 S.W.3d 259, 267 (Tex.2013).

Under Rule 252 the party must:

- describe the specific discovery sought. *Wal-Mart Stores Tex., LP v. Crosby*, 295 S.W.3d 346, 356 (Tex.App.–Dallas 2009, pet. denied);
- describe the procedure the party intends to use to obtain the discovery and the person from whom the discovery will be sought. *Verkin v. Southwest Ctr. One, Ltd.*, 784 S.W.2d 92, 94 (Tex.App.–Houston [1st Dist.] 1989, writ denied);
- describe the evidence or testimony needed. See Tex. R. Civ. P. 252; *Wal-Mart Stores*, 295 S.W.3d at 356;
- state that the discovery sought is material and show why it is material. Tex. R. Civ. P. 252; *J.E.M. v. Fidelity & Cas. Co.*, 928 S.W.2d 668, 676 (Tex.App.–Houston [1st Dist.] 1996, no writ); *Celotex Corp. v. Gracy Meadow Owners Ass'n*, 847 S.W.2d 384, 388 (Tex.App.–Austin 1993, writ denied);
- must show that the party used due diligence to obtain the discovery before requesting the continuance. Tex. R. Civ. P. 252; *Stierwalt v. FFE Transp. Servs.*, 499 S.W.3d 181, 192 (Tex.App.–El Paso 2016, no pet.);
- must describe the party's previous attempts to obtain the discovery. See Tex. R. Civ. P. 252; *Stierwalt*, 499 S.W.3d at 192;
- must explain why the party was unable to obtain the discovery earlier. See Tex. R. Civ. P. 252, *Risner*, 18 S.W.3d at 909;

●must include the statement, “The continuance is not sought for delay only, but so that justice may be done.” Tex. R. Civ. P. 252.

In a second (or later) motion for continuance, the motion must state that the evidence or testimony sought cannot be obtained from any other source. See Tex. R. Civ. P. 252; *Verkin*, 784 S.W.2d at 95.

None of the Bar’s entitled Motions for Continuance complied with the requirements of Tex R. Civ. P., 166a(g) and Tex R. Civ. P. 252. Moreover, the submission dates in those motions were continued by agreement, and there was an unsworn amended motion or request for a continuance in the Omnibus Amended Response, which basically states:

“Rule 166a(g) specifically provides that the court “may order a continuance to permit such affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.” The Court should deny Respondent’s hybrid motion for summary judgment for the reasons discussed *infra*. In the alternative, the Court should order a continuance as contemplated by Rule 166a(g.)”

Such language in a motion for continuance, whether verified or not, is insufficient. *Tenneco Inc.*, 925 S.W.2d at 647; *Kahanek*, 900 S.W.2d at 134.

F. MS. POWELL’S J-6 TESTIMONY DOES NOT CONTRADICT HER TESTIMONY IN HER DECLARATION.

The Bar now alleges that Ms. Powell’s testimony to the J-6 Committee (“J-6 Transcript”) was purposely withheld from production until a few days before the submission dates and (ii) Ms. Powell’s testimony in the J-6 Transcript contradicts statements in her Declaration, citing 21 pages¹. Those allegations are false – (I) the J-6 Committee did not provide Ms. Powell a copy of the transcript. It was released to the general public on December 29, 2022, thus it was equally available to the Bar as it was to Ms. Powell on that date; (ii) the testimony in the J-6 Transcript does not

¹Pages, 35, 37-41, 52-53, 62, 75, 80-81, 84 and 90-97.

conflict with Ms. Powell's statements in her Declaration. Specifically the only places in the J-6 Testimony that Ms. Powell mentions anything related to what she stated in her Declaration is on pg. 38, ln. 24 – 39, ln. 3; pg. 40, ln. 6 – 10; and pg 52, ln. 20 – 25, where the statements confirm the statements in her Declaration, Howard Klienhelder and Julia Haller were the primary drafters of the complaints in the Election Fraud Suits, and Ms. Powell had a limited role in gathering the evidence and affidavits to support the election fraud suits. *See Exhibits "1" and "2"* attached hereto for comparison.

There is nothing in Ms. Powell's J-6 Testimony that controverts Ms. Powell's testimony in her Declaration. The transcript was not a document the Bar requested in its sole Request for Production of Documents directed to Ms. Powell, so Ms. Powell was not obligated to produce it. Moreover, the transcript was equally available to the Bar as Ms. Powell after December 30, 2022.

G. NOTHING NEW IN THE MNT

The Bar attached nothing new in the Motion – absolutely no new summary judgment evidence presented in the Motion, to wit:

Exhibit 1, *MSJ* – contains no summary judgment proof for the Bar.

Exhibit 2, *Motion to Compel* – contains no summary judgment proof for the Bar.

Exhibit 3, *Bar's First Motion for Continuance of MSJ* – contains no summary judgment proof for the Bar, became moot when the first submission date for the MSJ was cancelled by agreement; it is deficient on its face; and it was superceded by the request for continuance contained in the Omnibus Amended Response.

Exhibit 4, *Bar's Third Amended Petition* – contains no summary judgment proof for the Bar.

Exhibit 5, *Bar's First Amended Response to MSJ* – contains no summary judgment proof for the Bar; it was superceded by the Second Amended Response to the MSJ and the Omnibus Amended Response; it is no longer in the record.

Exhibit 6, *Bar's Second Motion for Continuance of MSJ* – contains no summary judgment

proof for the Bar and became moot when the second submission date for the MSJ was cancelled by agreement; it is deficient on its face; and it was superceded by the request for continuance contained in the Omnibus Amended Response;

Exhibit 7, *Bar's Second Amended Response to MSJ* – contains no summary judgment proof for the Bar as it was superceded by the Omnibus Amended Response; it is no longer in the record.

Exhibit 8, *Bar's Omnibus Amended Response* – contains no summary judgment proof for the Bar.

Exhibit 9, *Final Summary Judgment* – contains no summary judgment proof for the Bar.

Exhibit 10, *Email Correspondence with Court* – contains no summary judgment proof for the Bar.

Exhibit 11, *J-6 Transcript* – contains no summary judgment proof for the Bar, moreover it was not a document sought by the Bar; it was equally available to the Bar as to Ms. Powell and supports, not contradicts Ms. Powell statements in the declaration.

Exhibit 12, *Emails produced by Ms. Powell* – contain no summary judgment proof for the Bar; produced prior to expiration of the discovery deadline.

H. NO HEARING REQUIRED

The Bar is not entitled to a hearing on the Motion because there was no showing that new evidence would likely result in different verdict. *State Farm Lloyds v. Nicolau*, 951 S.W.2d 444, 452 (Tex.1997). Moreover, the Bar did not even request an evidentiary hearing, the Bar only requested:

“... Petitioner asks the Court to grant Petitioner’s Motion for Reconsideration and/or for New Trial and deny Respondent’s summary judgment motions, and/or grant its *Petitioner’s Second Motion for Continuance of MSJ Hearing Date* filed on November 21, 2022.”

Therefore, the Bar is not entitled to a hearing on the Motion. *National Med. Fin. Servs. v. Irving ISD*, 150 S.W.3d 901, 905 (Tex.App.–Dallas 2004, no pet.) (section labeled “Notice of Hearing” at end of MNT was not a request to the court for a hearing).

I. CONCLUSION – FINAL SUMMARY JUDGMENT WAS PROPERLY GRANTED, MOTION MUST BE SUMMARILY DENIED

The Bar had the entire burden of proof in this case. *JLB Builders, L.L.C.*, 622 S.W.3d at 864.

A proper amended pleading supersedes and replaces prior pleadings. *Mensa-Wilmot*, 312 S.W.3d at 779. Therefore, the Bar's only summary judgment before the Court was that presented in the Omnibus Amended Response. *Id.*; *Seventeen Thousand*, 809 S.W.2d at 639.

The motions for summary judgment were timely served. Tex.R. Civ.P. 166a©; *Luna v. Estate of Rodriguez*, 906 S.W.2d 576,582 (Tex. App.–Austin 1995, no writ).

To defeat Ms. Powell's motions for summary judgment the Bar had to file a written response that points out evidence that raises a disputed fact issue on the challenged elements in each motion. *Ridgway*, 135 S.W.3d at 600. The Bar failed to do so; therefore, the Court was required to grant the No-E MSJ, *Sudan*, 199 S.W.3d at 292. The MSJ was proper for Ms. Powell because her summary judgment proof conclusively negated at least one essential element of the Bar's cause of action on those claims. *Goldberg*, 775 S.W.2d at 752.

Even if the Court were to consider every document filed in this case by the Bar – whether proper or not – the Bar submitted no summary judgment evidence that raised a genuine issue of a disputed material fact on any claim raised in both motions for summary judgment because there is none.

There was no proper motion for continuance before the Court. *Blake*, 886 S.W.2d at 409; *Taherzadeh*, 108 S.W.3d at 928.

The Bar is not entitled to a hearing. *Nicolau*, 951 S.W.2d 444, 452.

There is no evidence Ms. Powell violated any disciplinary rule, let alone evidence before the Court. The Final Summary Judgment was rendered based on law, the competent summary judgment evidence before the Court, and/or the absence of controverting summary judgment evidence that

raised a disputed fact issue, the Motion should be summarily denied.

Respectfully submitted,
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COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on April 10, 2023.

/s/ Robert H. Holmes
Robert H. Holmes

EXHIBIT “1”

1

2 [11:02 a.m.]

3

BY [REDACTED]

4

Q When did you figure all that out?

5

A I don't know.

6

7 Q And did you do that on your own, or did some expert or person with some
8 knowledge of election security and so forth help you form that opinion in the early days
9 after the campaign?

10 A I have been digging into it probably nonstop with the exception of sleeping
11 hours and a few eating hours since election night. And one of the remarkable things I
12 found was the testimony of Clint Curtis in 2004 before the House Judiciary Committee in
13 Ohio about the 2000 -- I think it was the 2000 or the 2004 election.

14 Curtis is a republican who testified in front of Jerry Nadler and Maxine Waters and
15 whoever else was on that special House Committee that sat in special seating in Ohio,
16 that he had been hired by the republican head of the Senate I think, or the House, in
17 Florida to write an algorithm to change votes for Bush in the 2004 election in Florida.

18 And, you know, everybody listening to it then was absolutely flabbergasted, but
19 he said he did it. And the company he worked for on top of all that had a relationship to
20 China, and had had a Chinese spy working for it.

21 So, you know, then I look at Smartmatic and it goes back to being founded in
22 Venezuela in 1977 by three Venezuelans that come out of nowhere, and then all of the
23 sudden have a multimillion dollar contact with Venezuela to literally rig elections in
24 Venezuela. They did it for Chavez.

25 They created the software, which is kind of like Hammer and Scorecard. Let's
just call it Hammer Scorecard because those are the names we've heard to call the same

1 has been going on and who is responsible for it, and they need to be eliminated from any
2 role in this country whatsoever.

3 Q And did you give some version of that sort of explanation at this White
4 House meeting?

5 A I have no idea.

6 Q Okay. But something at the White House meeting led you to believe that
7 you were going to be sort of having to go it on your own, essentially, to establish or prove
8 what you believed happened. Is that fair to say?

9 A It was the fact that I was going to call out whoever it was. I was going to
10 tell the truth, regardless of whether it hit Republicans upside the head or Democrats. I
11 didn't care about political parties. I didn't care who thought they were hot stuff. I
12 didn't care whose job I was fixing to annihilate. It just didn't matter to me at all. The
13 chips were gonna fall where the chips were gonna fall, and politicians have a real problem
14 with that.

15 Q So in the aftermath of that meeting, did you set out, sort of, essentially on
16 your own to try to pull together the evidence to establish what you believed happened?

17 A Exactly.

18 Q And did you set up base in Washington?

19 A Temporarily, because I thought there were some people I was going to be
20 able to work with and in a sense I still tried to work with some of the other folks. Like, if
21 I got some information that was important, I would send it to Mr. Giuliani or to anybody
22 else that I thought should know it because I knew there were other people working on
23 different things, and taking different tacks, and I didn't know exactly what those were, in
24 part because they wouldn't say.

25 But to the extent what I found was important, I shared it with other people as best

1 I could. But still, I knew, you know, I was gonna be on my own calling out whatever I
2 found the evidence to show.

3 Q Did you have office space in Washington at that time?

4 A No.

5 Q Did you -- did anyone provide you with a place where you could work?

6 A No. I rented a hotel suite at the Weston Hotel. I think it was the Weston
7 in Arlington.

8 Q And were other attorneys or individuals who were working on the election
9 challenge efforts also working out of the Weston in Arlington?

10 A The only ones that I knew were there at the time were Phil Kline and his
11 group. I think it was called the Amistad project or something. In fact, I'd gone over
12 there understanding that we were going to collaborate in some fashion only to be
13 essentially thrown out of his office when I went to say hello, I'm here, how can I help.

14 Q Why were you thrown out of the office, if you know?

15 A He said they were going on their own direction, and unless I was willing to
16 take orders from him, I wasn't welcome.

17 Q My understanding is that Mr. Kline and the Amistad group had rooms on a
18 different floor from where other attorneys were working in the Weston; is that correct?

19 A I know they had set up a fairly significant camp with offices and conference
20 rooms, and I don't know what all. I saw those briefly until I was told to leave. But
21 that's all I know about that. That was my last interaction with Mr. Kline that I recall.

22 Q In the space where you were working, were there other attorneys also
23 working in connection with the election challenge efforts?

24 A There were -- well, let's see, Emily Newman and Julie Haller came over one
25 day and volunteered. And Howard Kline Hendler, who I think had originally come down

1 with Giuliani. Although, I don't know that for sure. But anyway, he was around, and
2 he had volunteered. And I think we were the only attorneys looking at filing the cases
3 for the electors and the other party chairs.

4 Q Was Mr. Giuliani working out of the Weston as well?

5 A I don't -- the last time I saw Giuliani, he was working out of the Mandarin
6 Oriental. To my knowledge, he was not working out of the Weston.

7 Q I'm not talking about the last time you saw him. I was talking about maybe
8 in the early stages, before the Mandarin, was he working out of the Weston?

9 A Not to my knowledge.

10 Q Was Mr. Kerik at the Weston?

11 A I don't remember -- I don't remember whether Bernie was at the Weston. I
12 know he was at the Mandarin Oriental at one point. But I don't remember whether he
13 was at the Weston or not.

14 Q How about Mike Trimarco? Was he working out of the Weston?

15 A I don't know where Mike Trimarco was working out of. I can tell you he
16 kept showing up in my work area at the Weston, and I had to keep asking him to leave.

17 Q Why was he showing up, if you know?

18 A I don't know.

19 Q Why did you ask him to leave?

20 A Because he wasn't a lawyer, and I wasn't having him do anything, and I
21 didn't know why he was there. He was like this sweet puppy dog that kept showing up,
22 but I had to keep asking him to leave.

23 I didn't want people sitting around in my work space listening to what we were
24 talking about or anything else. In fact, my ideal workday is a room -- is when I get -- the
25 phone doesn't ring all day, and I'm sitting in my office and I get to read and write. And I

1 haven't had one of those since I took the Flynn case.

2 Q Was Mr. Trimarco paying for rooms at the Weston for people to work?

3 A I don't know what Mr. Trimarco was doing.

4 Q Were you paying for your set of room?

5 A I know I took the front desk a credit card for my room.

6 Q Okay. And other than Ms. Newman, Julie -- I'm sorry. I didn't get her last
7 name. You said Holler?

8 A Haller, H-A-L-L-E-R.

9 Q And Howard Kline Hendler. Were there any other attorneys working in
10 your space or where you were working at the Weston?

11 A I can't think of any others.

12 Q And did you say you were mostly working on putting together litigation for
13 the clients you had mentioned earlier; the electors and the folks involved with various
14 political organizations?

15 A Yes.

16 Q Okay.

17 A Basically, I was looking for whatever the evidence showed.

18 Q Were you working with any -- did you interact with any lawyers who had
19 been hired by the Trump campaign or who were working for the Trump campaign?

20 A I don't think so.

21 Q Did you ever meet someone named Matt Morgan?

22 A I've heard the name.

23 Q Did you work with him at all?

24 A Not that I recall.

25 Q Or Justin Clark?

1 A That name rings a bell, but I don't remember working with him either.

2 Q It is fair --

3 A I really didn't work with anybody in the campaign. I might have sent them
4 information. They might have given me some information. I don't know. But I could
5 not legitimately represent that I, quote, "worked" with anybody in the campaign.

6 Q Okay. So is it fair to say you weren't coordinating strategy from anyone
7 from the campaign?

8 A That's correct.

9 Q You had your cases. You were trying to work up your cases. That's what
10 you were focused on?

11 A Yes.

12 Q Was there an understanding with the other people who you knew were
13 working on the election effort on behalf of the campaign or the President that you were
14 gonna focus on one particular set of issues and maybe they were pursuing others?

15 A I couldn't begin to tell you what they thought or understood.

16 Q Okay. Let me pause right there to see if anyone -- I've been going a while
17 on my own here -- anyone else who is on the call has questions.

18 [REDACTED] Good morning. I just have a couple quick questions.

19 BY [REDACTED]

20 Q Hi. Good morning, Ms. Powell. My name's [REDACTED] I'm senior
21 investigative counsel.

22 A Good Morning. You're too young to be senior investigative counsel.

23 Q I think you're gonna actually make me blush, ma'am.

24 I just wanted to ask a couple questions about the funding [REDACTED] pointed out.
25 I think you mentioned a couple of other attorneys.

1 Q Yes.

2 A I had some interactions with Ivan, but I would not say I worked with him.

3 Q What were the nature of your interactions?

4 A Well, I went to political party at his house one time somewhere. I don't
5 remember whether it was before the election or after. I guess it would have been
6 before for somebody that was running for Congress in Virginia. And I know he knew
7 General Flynn, and I know he wanted to help. But I didn't incorporate Ivan as far as I
8 know. There have been any number of people that said they worked with me or for me
9 that didn't really work with me or for me.

10 Q Do you know who --

11 A I mean I think they thought they were trying to help me. I don't mean to
12 say anything bad about them. There were lots of people that were showing up and
13 wanted to help, but I couldn't -- there was no way to bring in everybody that was showing
14 up.

15 Q Understood. Who was the core group that you worked with?

16 A We talked about some of the people who were sort of coming and going. But
17 sort of through that nine or 10-week period, who was the core group that you would say
18 that you worked with?

19 A I would say the core group -- well, there were kind of two. There was the
20 group that wound up staying in Washington when I went to Tomotley. And that was
21 Howard, and Julie and Emily. They took the role primarily in drafting all the pleadings.
22 There was the group at Tomotley that included Seth Keshel, Carissa Keshel, Lin Woods, of
23 course, me, Jim Pinrose -- I'm trying to visualize the room they were all sitting in and tell
24 you who was sitting there. Sharon whose last name I don't know. That's all I can think
25 of right now.

1 Q Okay. How about Patrick Burn? How did he figure into the group?

2 A Patrick showed up at campaign headquarters one day when I happened to
3 be there because that office space was largely empty, as you might imagine, and he had
4 the cyber -- he had guys that understood the cyber part of it. And they wound up being
5 helpful and providing an affidavit from that angle of it.

6 Q You mentioned campaign headquarters. Was that also in Arlington?

7 A I think so.

8 Q And did you have meetings there?

9 You said it was largely empty, but did you have meetings with campaign staff in
10 the time shortly after the election?

11 A I had one very short meeting with some campaign folks right after the
12 election. That was kind of along in the timeframe where I realized it wasn't going to
13 work for me to do anything with campaign people because they were politicians. And
14 then we did use that empty space some later, but very briefly. It was too much hubbub
15 and mess going on there for me to get work done.

16 Q What else do you -- tell me what you can remember about that meeting that
17 you just eluded to where you realized they were politicians and they weren't really going
18 to be of assistance to you?

19 A I don't remember much about it other than it was very short. And I mean,
20 they didn't even want to look at me when I walked in the room.

21 Q Were they -- were you able to at least share your perspective and your views
22 on things?

23 A I don't recall being able to do that.

24 Q Had you been invited to that meeting?

25 A Only by Mr. Giuliani, and he wasn't much more welcome there than I was.

1 anyway. It would have been about that lawsuit.

2 BY [REDACTED]

3 Q Okay.

4 Do you know Connie Hair?

5 A Yes.

6 Q How do you know Ms. Hair?

7 A She's a friend, and she works with Louie.

8 Q Did you interact with her at all with respect to claims of election fraud of the
9 2020 election?

10 A Yes. I'd forgotten about her completely. I think she actually was helping
11 collect some information.

12 Q And I think she sent you some affidavits from time to time; is that correct?

13 A That's probably correct.

14 Q What conversations do you remember with Ms. Hair about the issues you
15 were pursuing?

16 A Again, I don't have specific recollection of any conversations.

17 Q Do you know if she shared your view of the -- of -- as you described it, your
18 view of what went wrong in the election?

19 A I don't recall. I know she knew something went wrong, but I don't know
20 whether she shared my view of what went wrong. I don't recall even expressing my
21 view of what went wrong to her. I was always trying to stay off the phone.

22 Q Okay. Did you ever -- and maybe the same sentiment of wanting to be left
23 alone to do all your work that you had will answer my next question.

24 But were you ever invited by Ms. Hair to speak to a group or like-minded
25 individuals regarding your concerns or claims of election fraud?

1 says Monday, December 21st, and I did some quick math there and got to Friday the
2 18th.

3 A Awesome.

4 Q So, on the 20th, so on Sunday, you said that you needed to see the President
5 as soon as possible face-to-face. And I'm just wondering if there was something that
6 you can recall that happened in between late Friday night and Sunday that caused this
7 urgency that you needed to see the President again.

8 A Well, I know on Friday he had asked me to be special counsel to address the
9 election issues and to collect evidence, and he was extremely frustrated with the lack of, I
10 would call it, law enforcement by any of the government agencies that are supposed to
11 act to protect the rule of law in our Republic.

12 And I don't remember what the status of the evidence was at that particular day,
13 but I know that we needed, if we were going to access the machines, time was a-wasting,
14 and we needed to get after it.

15 Q And so, on Monday morning, on the 21st, you said to Mr. Meadows: It's
16 imperative I be included in the meetings scheduled today with you, Rudy, and with the
17 President, about the machines and any of these issues.

18 And do you think the issues were different on Monday morning that you had
19 discussed on Friday night?

20 A I don't remember what happened in that timeframe.

21 Q Okay.

22 A I do have a vague recollection of, you know, Rudy and people going with him
23 to Michigan to access the Antrim County machines and there being some kind of debacle
24 in the first instance with that.

25 I can't recall whether they had to go back or not, but Rudy was off, you know, in a

1 Molly Michael prior to -- the materials that you had in hand that night, had you sent those
2 over previously?

3 A I don't know.

4 Q What was Mr. -- or General Flynn's role, or why was he with you at that
5 meeting that night?

6 A I don't remember.

7 Q How about Patrick Byrne, how did he get --

8 A He invited himself. He inserted -- he and Emily -- Emily apparently knew
9 the people that could let us in, and I think that's the first time I met Garrett Ziegler,
10 because she knew Garrett, and there was another young man too. And Patrick invited
11 himself.

12 Q Okay. You've already said you didn't know who came up with this idea, but
13 did you believe that it was going to work, that you were going to be able to get to see the
14 President without an appointment?

15 A I had no idea.

16 Q In fact, you did get to see the President without an appointment.

17 A We did.

18 Q Mr. Ziegler and someone else helped you get into the White House?

19 A Yes.

20 Q And then did you just make your way to the Oval Office?

21 A Yes.

22 Q And then why don't you tell me about your initial discussions with the
23 President after you saw him.

24 A Well, I showed him Executive Order 13848, and I showed him the CISA/FBI
25 finding of foreign interference in the election originally made on I think it was October

1 30th or the 31st and then updated as of the date of the election, finding that Iran had
2 already exercised significant interference in the election activities and was a persistent, I
3 think they called it a persistent foreign threat actor or something, whatever their
4 standard language is, showed him the terms of the executive order and let him read it,
5 the same with the CISA finding.

6 Whatever other documents I had with me I started through those with him to
7 show him what evidence had been collected so far, and that's about, I think, as far as I got
8 before Molly apparently had -- or somebody had notified the world that we were there,
9 which caused massive consternation among the staff of the White House Counsel's Office
10 and probably Mr. Meadows and Mr. Giuliani too, to know that I had access to the
11 President without their supervision. And so they all came running.

12 Q How much time did you have alone with the President -- and I say
13 alone -- you had other people with you, but --

14 A Right.

15 Q -- from his aides before the crowd came running?

16 A Probably no more than 10 or 15 minutes.

17 Q Was -- in that --

18 A I bet Pat Cipollone set a new land speed record.

19 Q In the short period of time that you had with the President, did he seem
20 receptive to the presentation that you were making?

21 A He was very interested in hearing particularly about the CISA finding and the
22 terms of 13848 that apparently nobody else had bothered to inform him of.

23 Q And I want to -- I know the meeting lasted a very long time, and I don't want
24 to go through all the particulars of it. It's been very well reported -- or actually let me
25 just ask you that. Have you read any of the reporting on that meeting?

1 back after you left?

2 A I do not know. That wouldn't surprise me.

3 Q Okay. But from your perspective, they left at or around the same time you
4 did, you just can't say whether they returned?

5 A Right.

6 Q Was anybody else left behind -- Mr. Philbin -- or Mr. Cipollone, Mr. Lyons,
7 and the other folks who had been there earlier, were they still in the residence when you
8 left?

9 A I have no recollection.

10 Q Okay.

11 A I do know I caused quite a stir that night.

12 Q Okay. And I know this is how we sort of -- we started with this, about what
13 the takeaway was. Did you get any closure on any of the issues that you had come to
14 talk to the President about by the time you left late at night on the 18th?

15 A Any closure?

16 Q Or even guidance or indication of where things stood.

17 A I don't know how to answer that. I knew -- I knew, although he had said he
18 wanted me to be special counsel and he had said he gave me a security clearance, I mean,
19 it was real clear from the body language and what everybody else was saying in the room,
20 and that was, frankly, in the Oval Office, that that just wasn't going to happen, like Mark
21 Meadows confirmed for me the next morning when I, like I said, just ran it to ground.

22 So I don't know that there was -- that I would consider there was anything
23 unresolved except we still had the same problem of needing evidence and him having a
24 decision to make on behalf of the country.

25 I mean, one of the things I have a very specific recollection of -- and I think I did

1 today, okay, so with all of the information that you were able to gather over the course of
2 your investigation and since, do you believe that foreign actors compromised voting
3 machines and manipulated votes in connection with the 2020 election?

4 A I think it is a strong possibility.

5 Q Foreign actors. I'm sorry. I thought you were done. I apologize.

6 A Yeah, well, I thought I was too, and then I thought, you know, it could've
7 been more indirect. I mean, there's apparently \$600 million invested from China into
8 the group that owns Dominion, shortly before the election.

9 All the parts are made in China of the Dominion machines. They could've been
10 hacked from anywhere in the world. They were specifically designed to leave ports
11 open.

12 If you look at their manuals and their operating instructions, you can see that
13 anyone can log in from anywhere. Because ports are left open, remote access is not a
14 problem.

15 We know Dominion has an operation in Serbia. In fact, a strong component of
16 their computer algorithms and information are done in Serbia. We know that in
17 election 2016, the Serbia group ran the control center and help center for our election.

18 Yeah, there is foreign activity all over the place with respect to our election.

19 Dominion is actually a Canadian company with substantial operations in London
20 and, of course, Serbia.

21 Smartmatic and the whole Venezuela connection, that is all still there.

22 It's a serious problem for the integrity of our elections that's been documented by
23 Democrats, including Carolyn Maloney, Elizabeth Warren, Amy Klobuchar and the entire
24 HBO documentary called "Kill Chain," not to mention Harri Hursti's work in "Hacking
25 Democracy." It's everywhere.

1 And the fact that people have known about it on both sides of the aisle for this
2 long tells me it's an even bigger problem than I thought it was when I first got into this
3 and that the corruption is more widespread than I originally imagined.

4 Q So which foreign actor do you believe interfered with or manipulated votes
5 in connection with the 2020 election?

6 A I'm not saying -- I'm not saying that somebody in China sat there and
7 changed votes. I don't know whether that happened or not. But I do know by now
8 that the machines are designed to enable someone to do that, and I know that people on
9 both sides of the aisle, in Congress and in other places in our government, have known
10 that for 20 years and haven't done jack shit about it.

11 Q In which States do you believe votes were manipulated?

12 A I think it's entirely possible that an algorithm was run in machines across the
13 country to lower the obvious nature of any massive deviation. The massive deviations
14 were in the swing States that shut down the night of the election, where you see a vote
15 spike of a hundred thousand or more votes, all of a sudden, in the middle of the night,
16 when nobody's even supposed to be counting.

17 That does not happen. That is mathematically impossible. If you look at the
18 videos by Dr. Frank, he explains how he has calculated what the algorithm was for each
19 State. They apparently went in and injected false voters into the voter database, which
20 is part of the government-funded patent that I found, that allows them to do that, and
21 then mined from that to inject votes as needed to run, like, a thermostat what they
22 wanted to do to create the outcome they wanted of the election.

23 And, again, as I mentioned earlier, I found the patent for that.

24 So all this business of "oh, it can't happen" is total bullshit. It's patented. And
25 our Department of Defense holds the patent. So, if you guys really want to do an

1 investigation of something, you probably ought to look into the Defense Department also
2 and the CIA and see what they've done with all this. Because we're not the only country
3 that's had this problem.

4 Q So, when you said that they were able to inject votes, who's the "they"?
5 Who --

6 A I don't know. I would love to find that out. It is on my list of missions to
7 do before I die.

8 Q And when Mr. Meadows, in the email we were just looking at, was asking
9 you for what's your, sort of, best evidence that votes were actually switched, did you
10 provide him with what your best evidence was at that point?

11 A There came a point in time when I stopped giving Mr. Meadows any
12 information because I wasn't sure what was being done with it.

13 Q So was there information -- was there more compelling evidence that you
14 had regarding actual votes being switched than what you gave to Mr. Meadows?

15 A I don't remember what all I gave to Mr. Meadows.

16 Q You --

17 A But at some point I simply stopped trying to see the President. It was -- or
18 trying to talk to any of them, and I think it was around about that time.

19 Q There were other folks, in the course of your work post-election, who were
20 asking you for, sort of, proof of the things that you were claiming. Is that fair to say?

21 A Sure.

22 Q Mike Lee, did he ask you for proof of what you were claiming?

23 A I don't remember, but I wouldn't dispute it.

24 Q And did you provide Senator Lee with the best evidence that you had to
25 support your claims?

1 A I don't remember what I gave Mike Lee.

2 Q I guess a better way or a different way to put it -- and folks have said this
3 about their interactions with you, and I want to get your response on this -- that you said
4 there was certain information you had that you could not share with them. Is that
5 something -- is that true? Did you ever say that to anyone, that there was information
6 that you possessed but that you were not comfortable or not willing to share?

7 A Yes.

8 Q And to whom did you say that?

9 A Well, the only one I remember saying it to was Tucker Carlson.

10 Q Okay. And why is it that you were not willing to share information that you
11 had with Tucker Carlson?

12 A We had filed lawsuits, and there's a proper way to go about sharing
13 information when you're in litigation, and there are improper ways to go about it.

14 And there also came a time when I became concerned about the welfare of some
15 of our witnesses. In fact, the young man from Venezuela reported that he had been
16 hassled, and he's reporting and has reported being even more hassled after an article
17 came out on him recently in one of the publications.

18 Q Got it. You mentioned Harri Hursti a moment ago. Do you believe he's a
19 credible expert in this field?

20 A Harri Hursti's done a lot of work in this field.

21 Q Have you talked with him about any of the claims that you have with respect
22 to the 2020 election?

23 A No -- well, I think -- I think I've had a conversation with Harri, but, no, I did
24 not consult him as an expert on this. He did an affidavit in *Curling v. Raffensperger*
25 that we used which reminds me that, you know, Judge Totenberg is the only Federal

1 judge in the country who's actually heard any of these witnesses testify about problems
2 with the Dominion machine, and that resulted in her 145-page decision that came out 3
3 weeks before the election that's essentially a scathing indictment of the Dominion
4 machines. It was just too close to the election for her to issue an injunction.

5 We also got a temporary restraining order from Judge Batten in Atlanta that
6 secured first all the machines in Georgia for potential inspection, and then the second
7 one he entered secured machines in three counties for inspection.

8 Q Mr. -- or Professor Hursti signed on to a statement that I'm sure you're
9 aware of, from election security scientists that said: To our collective knowledge, no
10 credible evidence has been put forward that supports the conclusion that the 2020
11 election outcome in any State has been altered through technical compromise.

12 Are you aware of that expert statement?

13 A No. But it kind of reminds me of the statement of the 41 intelligence
14 officials that said there was no problem with the Hunter Biden laptop too, wasn't it?

15 Q So did you ever talk to Mr. Hursti -- or Professor Hursti about his view that
16 there had not been -- there was no evidence to support the conclusion that the election
17 outcome in any State had been altered through technical compromise?

18 A No, I haven't.

19 Q How about Alex Halderman, do you know him? Are you familiar with
20 Professor Halderman?

21 A Yes.

22 Q Do you think he's got credentials and expertise in his field of election
23 security plus -- and vulnerabilities involving election machines?

24 A I think he does.

25 Q Are you familiar with his position on what happened in the 2020 election or

1 what did not happen in the 2020 election, with respect to foreign interference?

2 A No. But it wouldn't surprise me if it isn't identical to Mr. Hursti's.

3 Q Have you talked to any election security expert who has shared your view
4 that there was foreign interference and technical compromise of voting machines in the
5 2020 election?

6 A Yeah, I think so.

7 Q Who's that?

8 A I think that's a work product privilege.

9 Q Did you put forward any expert -- so just to be clear, you're aware of
10 expert -- an expert conclusion that supports your view of the election, but you're not able
11 to share it?

12 Mr. Tobin. Just object to the form in terms of, I don't know that you all are
13 talking about the same -- what the meaning of expert is, but go ahead.

14 The Witness. You know, we have a number of expert reports that we made
15 public that are attached as affidavits in reports to our filings. Those are the only ones
16 that I could discuss right now.

17

BY [REDACTED]

18 Q Is there some other expert, without disclosing the contents of it, is there
19 some other expert report or affidavit or declaration that you have that supports the
20 claims of foreign interference that you have not filed in court?

21 A It depends on how you define foreign interference, for one thing, and I don't
22 think I can answer that.

23 Q So -- well, we started this by -- I shared with you the statement of scientists.
24 There are 56 election security scientists who signed on to the statement -- or excuse
25 me -- 59 that I read to you earlier, and you said that you thought that Professor

1 Halderman, who also signed that statement had similar views to Professor Hursti.

2 And I asked you whether you had consulted any experts who had a contrary view,
3 and that's what I'm getting at, whether you have an expert report, declaration, or
4 affidavit from an expert in the field who has a contrary view to the statement I read you.

5 Mr. Tobin. Same objection as before. Go ahead.

6 The Witness. Yeah, and I'm not sure all the expert reports we've collected at this
7 point. So I really -- I really can't answer that. I don't have knowledge of everything
8 that's been done at this point.

9

BY [REDACTED]

10 Q Do you also believe that domestic actors manipulated voting machines to
11 change the results of the 2020 election?

12 A Well, again, you know, people can parse words over these things, like,
13 manipulated. I think the important point for you to understand is that the machines are
14 designed to allow that to happen, that there can be mass adjudication of ballots.

15 For example, I think it's Fulton County, Georgia, where the, quote, adjudication
16 rate, a patent designed and held by Eric Coomer, among others, was 94 percent, which
17 means that someone other than the person who cast the ballot decided the votes in 94
18 percent of the votes cast in Fulton County. There was no way to individually review and
19 adjudicate those votes in the time allotted, so there had to be mass adjudication of them.

20 Q Could I stop you? Could I stop you, or do you have something else --

21 A Yeah.

22 Q -- you wanted to say on that?

23 A No. Go ahead.

24 Q So upon what do you base the statement that in Fulton County the
25 adjudication rate was 94 percent?

1 A I saw a report to that effect somewhere.

2 Q What does that mean? What does "adjudication" mean in this context?

3 A It means that -- well, for example, the Dominion machines -- the county,
4 okay, let's just -- and this is hypothetical -- the county person that sets up the county's
5 operation of the machines, whoever does that for Dominion can set it up to ignore all the
6 first line of the ballot. They can set it up to ignore all the signatures. They can put
7 something in the QR code to reject everything marked for Trump.

8 I mean, there are any number of ways, based on the design of these machines,
9 that you can see even reading their own manuals, that allow them to kick out votes for
10 whatever reason.

11 And, if the machine kicks the vote out, then it goes into what's called an
12 adjudication file, where somebody else decides what the vote's going to be. And my
13 understanding from one of the reports I read -- and I don't remember which one -- was
14 that the adjudication rate for Fulton County was, like, 94 percent. There should never
15 be an adjudication rate, frankly, of more than 1 percent. That should've rendered
16 Fulton County just -- that should've rendered the Georgia results, frankly, invalid.

17 Q So, based on this information that you're referring to, your understanding is
18 that 94 percent, almost all of the votes in Fulton County were sent to adjudication, and
19 some individual had to decide who that vote should be for?

20 A Exactly.

21 Q And what's your understanding as to who did that? Which individual was
22 adjudicating 94 percent of the ballots in Fulton County?

23 A I do not know.

24 Q Okay. And did this happen in other counties around the country?

25 A I would imagine it did, but I don't know or recall specifically.

EXHIBIT “2”

EXHIBIT “2”

DECLARATION OF SIDNEY POWELL

Pursuant to the provisions of the Texas Civil Practices and Remedies Code § 132.001, I Sidney Powell make the following declarations:

1. “My name is Sidney Powell. I am over 18 years of age and am fully competent to make this declaration. I have personal knowledge of all facts and statements contained herein, and they are true and correct.

2. I have been licensed to practice law in Texas since 1978. I am a member in good standing of the State Bar of Texas, the United States Supreme Court, the bars of multiple federal circuit courts of appeals, and the bars of the federal district courts in Texas.

3. I served as President of the American Academy of Appellate Lawyers—of which I was an elected member—and of the Bar Association of the Fifth Federal Circuit. I taught civil, criminal, and appellate advocacy for the Department of Justice, the State Bar of Texas, and spoken widely for various bars and professional associations.

4. I was part of a team of lawyers that filed four lawsuits alleging massive election fraud involving, *inter alia*, voting machines in Georgia, Michigan, Wisconsin, and Arizona (“Election Fraud Cases”). Time was of the essence in our election suits,

we were inundated with information, and members of the team attempted to vet and sort all information before providing any affidavits or reports to the court. We were working 18 - 20+ hour days through much of November and December. As lead counsel I had to rely on forwarding counsel and other counsel in obtaining and determining the validity of the exhibits attached to the complaints.

5. While I accept full responsibility as the most senior federal practitioner on the team, and my name appears on the filings, I did not draft the complaints nor compile or attach the exhibits attached to any of them. I personally had little to no role in the detailed vetting and sorting of the information provided to us.

6. In particular, I played no role in compiling or filing and had no actual knowledge of the exhibits attached to the complaint downloaded from the Georgia Secretary of State's office that were filed in Case No. 1:20-cv-04809-TCB, United States District Court, Northern District of Georgia. Specifically the Commission has challenged two exhibits attached to the complaint filed in the Georgia Case, and the Bar alleges that Exhibits "5" and "6," violated Disciplinary Rules §§ 3.08(a)(1) & (5) and § 8.04(a)(1). I relied on other counsel to download the challenged exhibits before they were filed. They were not even necessary to the complaint. That Georgia "rushed" to bring in the Dominion machines was widely reported in the media and the two exhibits, Exhibits "5" and "6" were not material. The date or signature were not

an issue; they are indisputable facts.

7. Likewise, I did not compile the challenged exhibits to the complaints filed in the other three cases, being the Michigan Case, Case No. 2:20-cv-13134-LVP-RSW, United States District Court, Eastern District of Michigan; Wisconsin Case, being Case No. 2:20-cv-1771, V, United States District Court, Eastern District of Wisconsin; and the Arizona Case, being Case No. 2-20-cv-02321-DJH, United States District Court District of Arizona.

8. In addition, the Commission alleges that I sponsored an affidavit from an anonymous source who claimed to be a “military intelligence expert” who used the code-name “Spyder,” who was later identified as Joshua Merritt; and that I had knowledge that Mr. Merritt never actually worked as a “military intelligence expert.” I did not know that Mr. Merritt never worked in military intelligence and he may have.

9. Moreover, the Commission clearly contradicts itself in Footnote Number 2 of its Second Amended Petition, by stating that Mr. Merritt purportedly admitted to the Washington Post that his affidavit—to which he had sworn under penalty of perjury—was incorrect on December 11, 2020. If the Post’s report is correct, this is an admission to perjury by Mr. Merritt—well after his affidavit was attached to the complaints. I understood that others on our team determined that the statements in the Spyder Affidavit were reliable, in fact Mr. Harold Kliendhelder admitted in open court

in Michigan that he verified the Spyder Affidavit was valid. Mr. Kleindhelder offered to produce “Spyder,” Jousha Merritt to testify about the statements in the Spyder Affidavit but Judge Parker refused. *See Exhibit “A” attached hereto*, a true and correct copy of the a portion of the transcript in the Michigan case held on July 12, 2021, in the Michigan case, *King v. Whitmer*, Case No. 20-cv-13134. I relied on Mr. Kleindhelder and believed Mr. Merritt’s affidavit was true and correct when it was attached to all our pleadings and none of us would have included it had we not believed it to be correct.

10. I was receiving constant reports of developments and potential evidence to support our allegations. Validation of this evidence was by the forwarding counsel and co-counsel to whom I handed it off.

11. The Georgia complaint—and the other three—were drafted primarily by other attorneys on our team, who were working in Virginia at the time, while I was working in South Carolina. I reviewed and made corrections to the complaints. I made a reasonable inquiry as to the exhibits attached to the complaints and relied on other counsel as to the validity of the exhibits attached to the complaints.

12. Harry MacDougald was our local counsel in Georgia, who accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing. Time was of the essence in our election suits.

13. Mr. MacDougald finalized and filed the complaint and selected and filed the exhibits on November 25, 2020. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Michigan complaint.

14. Scott Hagerstrom and Gregory J. Rohl were our local counsel in Michigan. They too accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

15. Messrs. Hagerstrom and Rohl finalized and filed the complaint for the Michigan Case and selected and filed the exhibits provided by others on our team on November 25, 2020. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Michigan complaint.

16. Prior to the complaint being filed in the Michigan Case, I did receive a copy of the complaint from Mr. Kleindhender, reviewed the document and returned it to him 45 minutes later with some minor corrections.

17. Michael D. Dean and Daniel J. Eastman were our local counsel in Wisconsin, who also accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

18. Messrs. Dean and Eastman finalized and filed the complaint in the

Wisconsin Case on December 1, 2020 and selected and filed the exhibits provided by others on our team. I did not review the exhibits filed in the Wisconsin case before they were filed. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Wisconsin complaint.

19. Alexander Kolodin and Christopher Viskovic were our local counsel in Arizona, who also accepted the difficult, high-pressured and time-pressured job of compiling and making the actual filing.

20. Messrs. Kolodin and Viskovic finalized and filed the complaint in the Arizona Case on December 3, 2020 and selected and filed the exhibits provided by others on our team. I reviewed and made corrections to the complaint. I made a reasonable inquiry as to the exhibits attached to the complaint and relied on other counsel as to the validity of the exhibits attached to the Arizona complaint.

21. There are no circumstances under which I would knowingly mislead any court—much less knowingly make a false, dishonest, or deceitful statement at any level. That is completely contrary to my personal integrity and the way I have practiced law for now 44 years.

Further Declarant sayeth not.”

/s/ Sidney Powell

Sidney Powell

UNSWORN DECLARATION

My name is Sidney Powell, my birth date is May 1, 1955, and my address is 2911 Turtle Creek Blvd, Suite 300, Dallas, Texas 75219. I declare under the penalty of perjury that the statements contained in the foregoing Declaration are true and correct.

Executed in Dallas County, Texas on July 18, 2022.

/s/ Sidney Powell
Sidney Powell

EXHIBIT “A”

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN,
JOHN EARL HAGGARD, CHARLES JAMES RITCHARD,
JAMES DAVID HOOPER and DAREN WADE RUBINGH,
Plaintiffs,

V.

CIVIL ACTION
NO. 20-cv-13134

GRETCHEN WHITMER, in her official capacity
As Governor of the State of Michigan
JOCELYN BENSON, in her official capacity
As Michigan Secretary of State, the Michigan
BOARD OF STATE CANVASSERS,
Defendants,

And

THE DEMOCRATIC NATIONAL COMMITTEE and THE
MICHIGAN DEMOCRATIC PARTY, and ROBERT DAVIS
And THE CITY OF DETROIT,
Intervenors,

And

SCOTT HAGERSTROM, JULIA HALLER,
ROBERT JOHNSON, L. LIN WOOD, HOWARD
KLEINHENDER, SIDNEY POWELL, and GREGORY ROHL,
Interested Parties,

And

MICHIGAN STATE CONFERENCE NAACP,
Amicus.

MOTION HEARING
BEFORE THE HONORABLE LINDA V. PARKER
United States District Judge
Detroit, Michigan
Monday, July 12, 2021

(All parties appearing via videoconference.)

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- - -

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1 to respond to your question about who had a role in the
2 affidavit of a witness in question that you mentioned, and my
3 client doesn't recall specifically when she looked at this
4 affidavit. She said she saw it at some point, but, again, she
5 was working at home doing basic editing, research, and so, you
6 know, she didn't have any role in terms of investigating or
7 doing due diligence on these particular affidavits. She's not
8 saying they're accurate or inaccurate, but her role was more
9 limited.

10 **THE COURT:** All right. Let me move on in terms of
11 experts, those affidavits that have been submitted, and my
12 questions are going to pertain to who spoke with these
13 individuals for purposes of understanding the source of their
14 facts that they were referenced in the affidavit and basis for
15 their conclusions. Who spoke to these experts before
16 submitting their reports as evidence? Dealing with expert
17 reports.

18 So let me start with Joshua Merritt. Who spoke with
19 him for purposes of determining the source of his facts and the
20 basis for his conclusions before submitting?

21 And if there is counsel here who doesn't know the
22 answer to that question because they had no involvement in it,
23 because they didn't speak, please raise your hand. If you are
24 not -- if you were not an individual who spoke in advance to
25 Joshua Merritt about the source of his facts and the basis for

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1 his conclusion in the report that he provided, raise your hand
2 if you weren't involved with it.

3 Okay. So I'm going -- okay. Let me name the
4 individuals because I want to -- please keep your hand up.

5 **MR. WOOD:** Your Honor, could you restate the
6 question, please?

7 **THE COURT:** The question -- yes, I will. The
8 question -- as relates to the affidavit that was submitted by
9 Joshua Merritt, my question is: Who spoke to him in advance
10 before including his affidavit to the complaint? You know, did
11 you speak to him for purposes of determining the source of his
12 facts around the basis of his conclusions? Who on this call
13 had that type of conversation with Mr. Merritt?

14 **MR. JOHNSON:** Your Honor, perhaps --

15 **THE COURT:** No, no. Go ahead, Mr. Johnson. Let me
16 just do this: Raise your hand if you had the conversation with
17 him, if anybody spoke with Joshua Merritt in advance of the
18 submission of his affidavit.

19 So right now we have Mr. Kleinhendler.

20 Mr. Johnson, did you have your hand up for that?

21 **MR. JOHNSON:** I had my hand up that I did not speak
22 with him or, for that matter, with any of the experts.

23 **THE COURT:** Okay. Okay. We'll make a note of that.

24 But, Mr. Kleinhendler, you spoke with him before the
25 affidavit was submitted, Joshua Merritt; is that true?

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1 **MR. KLEINHENDLER:** Yes.

2 **THE COURT:** All right. And did you have an
3 opportunity to speak to him about the source of his facts?

4 **MR. KLEINHENDLER:** Your Honor, he was recommended to
5 us. As there are certain things I cannot disclose,
6 unfortunately, in public about his sources, about his
7 qualifications, and the reason for that is he has worked as an
8 undercover confidential informant for multiple federal law
9 enforcement and intelligence services. It's beyond merely what
10 is stated briefly in his declaration.

11 He did -- he did tell me what those -- you know, what
12 the basis is, what type of experience he had, and, based on
13 that, looking at what he had presented, with the detail, with
14 the URLs that he had cited, with the vulnerability to the
15 Dominion pass codes that were available to be hacked on what
16 they call the dark web, it was my honest belief that what he
17 was saying was correct.

18 I will take the opportunity, your Honor, to point out
19 that the one area in his affidavit that has come into dispute
20 was his role in the 305th military intelligence. At the time
21 it was my understanding that he had spent a reasonable amount
22 of time with that unit. Subsequently -- subsequently I did
23 learn that he did train with them, your Honor. He trained with
24 the unit. I think it's called Fort Huachuca. I can't remember
25 the exact one. However, he subsequently was transferred out of

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1 there.

2 However, I point out to you that that -- that one
3 point is minor and practically irrelevant because the basis of
4 his expert opinion and his factual opinion are based on, and
5 I'm happy to talk to you in camera and give you more detail of
6 his years and years of experience in cyber security as a
7 confidential informant working for the United States
8 Government.

9 **THE COURT:** Did you feel that it was -- did you make
10 that correction to the Court at any time? I'm not aware of it.

11 **MR. KLEINHENDLER:** I didn't have the time because
12 when I first learned of it, your Honor, when I first learned of
13 it, it was after all the cases had been decided and dismissed
14 and then we withdraw. We never made a further representation
15 to this Court, an argument to this Court about his
16 qualification in that regard, and, technically, your Honor --
17 technically, your Honor, the statement is not false. He
18 trained with the 305th. Okay. It's not technically false.
19 However, had I known in advance that he had transferred out, I
20 would have made that clear, but I didn't. I had no reason to
21 doubt.

22 **THE COURT:** Thank you, Mr. Kleinhendler.

23 Hang on a second.

24 Mr. Campbell, why do you have your hand up, sir?

25 **MR. CAMPBELL:** Because I wanted to let you know,

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1 there.

2 However, I point out to you that that -- that one
3 point is minor and practically irrelevant because the basis of
4 his expert opinion and his factual opinion are based on, and
5 I'm happy to talk to you in camera and give you more detail of
6 his years and years of experience in cyber security as a
7 confidential informant working for the United States
8 Government.

9 **THE COURT:** Did you feel that it was -- did you make
10 that correction to the Court at any time? I'm not aware of it.

11 **MR. KLEINHENDLER:** I didn't have the time because
12 when I first learned of it, your Honor, when I first learned of
13 it, it was after all the cases had been decided and dismissed
14 and then we withdraw. We never made a further representation
15 to this Court, an argument to this Court about his
16 qualification in that regard, and, technically, your Honor --
17 technically, your Honor, the statement is not false. He
18 trained with the 305th. Okay. It's not technically false.
19 However, had I known in advance that he had transferred out, I
20 would have made that clear, but I didn't. I had no reason to
21 doubt.

22 **THE COURT:** Thank you, Mr. Kleinhendler.

23 Hang on a second.

24 Mr. Campbell, why do you have your hand up, sir?

25 **MR. CAMPBELL:** Because I wanted to let you know,

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1 **THE COURT:** You did not speak with him?

2 **MS. HALLER:** I did review the filing -- I mean the
3 report, but I have not communicated with him, no.

4 **THE COURT:** All right. Did anybody on the -- speak
5 with Mr. Ramsland?

6 Mr. Kleinhendler, go ahead, sir.

7 **MR. KLEINHENDLER:** Yes, your Honor. Not only did I
8 speak with him, about ten days or so before the complaint, I
9 met with him.

10 **THE COURT:** Okay.

11 **MR. KLEINHENDLER:** I spoke with him often I reviewed
12 drafts of his report. I asked him clearly, "Are you
13 comfortable making these allegations? Are you comfortable with
14 the language in the affidavit? What are your sources? Who
15 else has assisted you?"

16 Because he writes an affidavit that he lists ASOG
17 (ph.) He spoke -- he briefly described some of the folks that
18 were working with him, and he submitted, your Honor, two
19 reports, an initial report and then a rebuttal -- the initial
20 was an affidavit sworn, his sworn testimony, and the rebuttal
21 was more of a 26(b) rebuttal report.

22 I worked with him on a rebuttal report after
23 analyzing and reviewing what the Defendants and the Intervenor
24 Defendants had placed before the Court, and I was involved with
25 that. And, yes, I spoke with him, and I was comfortable, your

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1 Honor, that what we were putting before the Court was true and
2 correct.

3 **THE COURT:** All right. Thank you.

4 **MR. BUCHANAN:** Your Honor, this is Mr. Buchanan. I
5 just wanted to clarify something. My client, Ms. Newman, did
6 communicate with Mr. Ramsland on a limited basis.

7 **THE COURT:** For what purpose?

8 **MR. BUCHANAN:** I think, you know, she was talking to
9 him about his affidavit in general, but, again, she was more of
10 a -- someone that was doing editing and, you know, trying to
11 gather the affidavits, including this particular one, but it
12 wasn't a substantive conversation where she was doing due
13 diligence on all the background. She asked some questions, but
14 it was limited conversation.

15 **THE COURT:** All right. Thank you. All right. I
16 have concluded --

17 **MR. CAMPBELL:** Your Honor, Ms. Powell has her hand
18 raised.

19 **THE COURT:** Oh, thank you. Ms. Powell.

20 **MS. POWELL:** Yes, I just wanted to make clear that I
21 have spoken with Mr. Ramsland a number of times.

22 **THE COURT:** Okay.

23 **MS. POWELL:** I cannot say whether it was before the
24 filing or after, and I can't remember when I reviewed his
25 affidavit, whether it was before or after.

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1 **THE COURT:** Okay. All right. Let me -- as relates
2 to this section of presuit investigation and these particular
3 experts, does counsel for the Defendants or the Defendant
4 Intervenors or Plaintiffs' counsel wish to say anything related
5 to the questions or the answers that I've received with that
6 section?

7 **MR. DAVID FINK:** I would.

8 **THE COURT:** All right. Raise your hand if you'd like
9 to be heard.

10 Okay. We're going to only hear from Mr. Fink.
11 Go ahead.

12 **MR. DAVID FINK:** Thank you, your Honor. I will not
13 go into the detail, nor do I think I need to, of what our
14 concerns were with all of these affidavits. That's laid out
15 pretty clearly in our briefing. What I do want to first do is
16 respond to something quite disturbing that Mr. Kleinhendler
17 said.

18 He said that he couldn't have known while the case
19 was pending, didn't learn until later, during the sanctions
20 process, about the issues related to the Merritt affidavit.

21 And, by the way, we're calling it the Merritt
22 affidavit, but of course this is the one that's identified as
23 Spider, in what was attempted to be an anonymous presentation
24 in redacted documents, which were so poorly redacted that we
25 found out the name.

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1 But here's what's important for the Court to know.
2 We attach as Exhibit 17 to our brief in support of sanctions a
3 *Washington Post* article that details all of the issues
4 regarding Mr. Merritt. Now, the reason that's so important is
5 not the accuracy of that article, but, rather, that article put
6 the world on notice on December 11th of 2020 -- *Washington Post*
7 let the world know that this man was not a military
8 intelligence expert. He washed out of training. That he,
9 himself, disavowed participation in the case.

10 All of that was in that article, and if that did not
11 put counsel on some kind of inquiry notice so they should have
12 exercised some due diligence at that point and advised the
13 Court that they had, apparently unintentionally they're saying,
14 made a major misrepresentation to the Court, I don't know what
15 could have put them on notice. They were on notice.

16 Now, the experts that we're talking about now, the
17 Court correctly asks the question, "Did you talk to those
18 experts?" I would simply add one more thing, which is very
19 relevant, which is talking to those experts or not, just
20 reading those reports, if they were properly vetted, would have
21 immediately told any diligent attorney that the reports were
22 desperately flawed, and I'll be very specific. For example, we
23 heard about the concerns about -- that Mr. Ramsland raised
24 about Antrim County and the Dominion machines. What's
25 important --

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1 **THE COURT:** Okay. Mr. Fink, wait a minute. Hang on.
2 I want to stop you because I am going to cover some of that,
3 and we can -- and, you know, why don't we stop there because I
4 have some additional questions. Of course, I'm going to let
5 everyone be heard, okay?

6 **MR. KLEINHENDLER:** Your Honor, can I respond to
7 Mr. Fink just on Mr. Merritt?

8 **THE COURT:** Yes.

9 **MR. KLEINHENDLER:** Okay. Your Honor, I learned of
10 the issues when I saw the *Washington Post* article.

11 **THE COURT:** Okay.

12 **MR. KLEINHENDLER:** I can tell you that many of the
13 allegations in the *Washington Post* article are false, and I
14 want to make this very clear to the Court and all counsel. I
15 spoke with Mr. Merritt Sunday. He is prepared to appear before
16 your Honor and discuss his qualifications and discuss, in
17 detail, his findings. That may require a closed session for
18 part of it. We'll let you decide. But I want to make it clear
19 to everyone that he is prepared to come here and testify and
20 put his qualifications and his opinions to the test. We have
21 asked in our pleadings for an evidentiary hearing.

22 Mr. Fink wants to wave around a *Washington Post*
23 article. He can do that. Mr. Merritt is ready to come to
24 court and put to bed any issues regarding his qualifications
25 and regarding his testimony.

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1 with an opinion and order a little bit later and, in the
2 interim, as I said, I will issue an order referencing
3 supplemental briefings and time frames.

4 I want to thank, once again, counsel for appearing
5 today. It has been a long day. Again, it has been a necessary
6 day.

7 Mr. Flanigan.

8 **THE CLERK:** Thank you all. Court is adjourned.

9 (Proceedings concluded 2:32 p.m.)

10 - - -

11 **C E R T I F I C A T I O N**

12 I, Andrea E. Wabeke, official court reporter for the
13 United States District court, Eastern District of Michigan,
14 Southern Division, appointed pursuant to the provisions of
15 Title 28, United States Code, Section 753, do hereby certify
16 that the foregoing is a correct transcript of the proceedings
17 in the above-entitled cause on the date hereinbefore set forth.
18 I do further certify that the foregoing transcript has been
19 prepared by me or under my direction.

20
21 /s/Andrea E. Wabeke

July 14, 2021

22 Official court Reporter
23 RMR, CRR, CSR

Date

24 - - -
25

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Robert Holmes on behalf of Robert Holmes

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