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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ERIC JENG, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Defendants.	22 OC 00023 1B Case No: ~~22 OC 00231~~ Dept. No: II **MOTION TO INTERVENE AS A PARTY OF INTEREST**

PARTY IN INTEREST DAVID GIBB'S MOTION TO INTERVENE AS A PARTY IN INTEREST

COMES NOW, DAVID GIBBS, individually and on behalf of REPAIR THE VOTE POLITICAL ACTION COMITTE (hereinafter "PAC"), by and through the undersigned attorney of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, who hereby submit the following MOTION TO INTERVENE as a party in interest. Proposed Intervenor David G. Gibbs individually and on behalf of Repair the Vote PAC, is the signatory of the Petition filed under NRS 295.009 as the Petition Filer.

David G. Gibbs, individually and on behalf of REPAIR THE VOTE PAC hereby requests that the Court grant him leave to intervene as a party in interest as of right pursuant to Nevada Rule of Civil Procedure 24(a)(2).

INTRODUCTION

The litigation *sub judice* involves a Complaint for Declaratory Relief and Injunctive Relief challenging Referendum Petition R-01-2022, filed against Nevada Secretary of State Barbara Cegavske. Proposed Intervenor David G. Gibbs, was omitted from the action as a Defendant either individually and/or on behalf of REPAIR THE VOTE PAC.

REPAIR THE VOTE PAC filed a Referendum Petition entitled "Referendum on the Provision Related to Changes in Voting Provisions from Assembly Bill 321 of the 2021 Legislative Session " See Exhibit "A". This Motion to Intervene is brought to allow David G. Gibbs individually and on behalf of REPAIR THE VOTE PAC to participate in this action.

STATEMENT OF FACTS

On or about January 28, 2022, Intervenor DAVID G. GIBBS, on behalf of the REPAIR THE VOTE PAC, filed Referendum Petition R-01-2022 with the Nevada Secretary of State.

The Petition challenges portions of Assembly Bill 321, which the Governor signed into law on June 2, 2021, among other matters, decriminalizing mail in ballots and what is known as ballot harvesting.[1]

[1] AB 321 Sec. 9. 1. "[E]xcept as otherwise provided in subsection 2, at the request of a voter whose mail ballot has been prepared by or on behalf of the voter, a person authorized by the voter may return the mail ballot on behalf of the voter by mail or personal delivery to the county clerk, or any ballot drop box established in the county, pursuant to section 8 of this act".
Formerly, NRS 293.353 *entitled* Marking and return of mailing ballot by voter; voting in person after receipt of mailing ballot; penalty made it a class E Felony for any person to return a mailing ballot other than the registered voter to whom the ballot was sent or, at the request of the voter, a member of the family of that voter.

The Petition further seeks to repeal sections of AB 321 related to mail in ballot procedures in Nevada including but not limited to 1) County and City Clerk procedures for sending out mail in ballots; 2) Ballot Harvesting; and 3) counting mail ballots with questionable postmarking.

The Initiative Petition drew the Complaint on file herein with a failure to include as a Co-Defendant neither the PAC or the individual acting on its behalf as a necessary party for participation and adjudication of the matter.

The Nevada Rules of Civil Procedure and the Local Rules of this Court do not require to attempt to meet and confer with the other Parties prior to filing this Motion.

LEGAL ARGUMENT

NRCP 24 entitled Intervention provides

a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a state or federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

"[I]ntervention is the requisite method for a nonparty to become a party to a lawsuit." *United States ex rel. Eisenstein v. City of N.Y., 556 U.S. 928, 933, 129 S. Ct. 2230, 173 L. Ed. 2d 1255 (2009)* (citation omitted).

Repair the Vote PAC meets the criteria for intervention as of right under Rule 24(a) because (1) it has a sufficient interest in the litigation's subject matter, (2) it could suffer an

impairment of its ability to protect that interest if it does not intervene, (3) its interest is not adequately represented by existing parties, and (4) its application is timely. *See Hairr v. First Jud. Dist. Court, 132 Nev. Adv. Rep. 16, 368 P.3d 1198, 1200 (2016).*

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest. *Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003).*[2]

Here, it is indisputable that REPAIR THE VOTE PAC has a specific interest in the dispute *sub judice* and has the right to protect its interest by intervening in this action, which they were intentionally omitted from.

A. THE COURT SHOULD GRANT INTERVENTION AS OF RIGHT

Upon filing of a timely Motion, Nevada Rule of Procedure 24(a)(2) requires that this Court "permit anyone to intervene who claims and interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impeded the movant's ability to protect its interest unless existing parties adequately represent that interest." *Id.*

As to adequacy of representation, the requirement of the Rule is satisfied if the applicant shows that representation of his interest "may be" inadequate; and the burden of making that showing should be treated as minimal. The final requirement of the test for intervention is "minimal," and is satisfied so long as "the applicant can demonstrate that representation of its

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[2] It is appropriate to supplement the Nevada caselaw with relevant federal precedent because "[f]ederal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119 (1990)).*

interests 'may be' inadequate." *Citizens for Balanced Use v. Montana Wilderness Ass'n, 647 F.3d 893, 898 (9th Cir. 2011) Lake Inv'rs Dev. Grp, Inc. v Egidi Dev. Grp., 715 F.2d 1256, 1261(7th Cir, 1983)* (quoting *Trbovich v United Mine Workers of America, 404 U.S. 528, 538 n 10(1972).*

When seeking intervention as of right under Nev. R. Civ. P. 24, an applicant must "(1) make timely application; (2) have an interest relating to the subject matter of the action; (3) be at risk that that interest will be impaired, 'as a practical matter', by the action's disposition and (4) lack adequate representation of the interest by the existing parties." *Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing Fed. R. Civ. P. 24(a)(2); Nissei Sangyo Am. V United States 31 F.3d 435, 438 (7th Cir. 1994).*

A. Intervenor's Motion Is Timely

First, Rule 24 requires that a motion to intervene be timely filed. This requirement "essentially sets out a reasonableness standard: potential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly." *United States v. Alisal Water Corp., 370 F.3d 915, 923 (9th Cir. 2004) (quotation marks, citation omitted); see also Garza v. County of Los Angeles, 918 F.2d 763, 777 (9th Cir. 1990)* (intervention motion untimely where prospective intervenor delayed in moving for intervention even though she knew the lawsuit was pending and "that part of the relief sought" might adversely affect her interests) *Nissei Sangyo Am v United States, 31 F.3d 435, 438 (7th Cir. 1994)*

There has been exceptionally little time since Intervenors became aware of this case, and therefore it's interest in it. This action was filed on February 18, 2022, and Intervenor's bring this Motion a week, thereafter.

B. Repair the Vote Pac Has A Strong Interest in the Outcome of this Matter, since Intervenor filed the Initiative

Second, Nev. R. Civ. P. Rule 24 requires that a movant "[c]laim an interest relating to the property or transaction that is the subject of the action, and [be] so situated that disposing of the action may as a practice matter impair or impeded the movant's ability to protect its interest. *Nev. R. Civ. P. 24 (a)(2).*

Whether an intervenor in a given case has a significant interest is a fact-specific inquiry, such that 'comparison to other cases is of limited value'" see. *Ins. Co. of Hartsford v schipporeit, Inc. 69 F.3d 1377, 1381 (7th Cir. 1995).* Accordingly, the intervenor must simply show "a direct, significant and legally protectable interest" that is unique from the parties in the case. *Keith v Daley, 764 F.2d 1265 (7th Cir, 1985).*

Repair the Vote Pac, and David G. Gibbs are the parties who filed the Notice of Intent to Circulate Statewide Initiative or Referendum Petition. The Notice of Intent filed on January 28, 2022 was signed by Gibbs on said day. The intent and interest of the initiative along with any type of evidence thereon is exclusive to the Intervenor, regardless of Defendants' position.

C. The PAC's Interests Will be Impaired if Plaintiff Prevails in this Action

When the disposition of a case will "as a practical matter foreclose rights of [a] proposed intervenor in a subsequent proceeding", the proposed intervenor's interest will be impaired. *Meridian Homes Corp. v Nicholas W. Prassas & Co., 683 F.d 201,204 (7th Cir. 1982).*

Rule 24(a) requires applicants to demonstrate they will "either gain or lose by the direct legal operation and effect of the judgment which might be rendered in the suit between the original parties." *Stephens v. First Nat'l Bank of Nev., 64 Nev. 292, 304–05, 182 P.2d 146, 151–52 (1947) (quoting Harlan v. Eureka Mining Co., 10 Nev. 92, 94–95 (1875)).*

Here if Plaintiff prevails, it will have successfully precluded Repair the Vote Pac from participating in this action without intervention or protection of its interests. Repair the Vote PAC has a direct, significant and legally protectable interest that is unique from the parties in the case.

D. Existing Parties Will Not Adequately Protect Repair the Vote PAC's Interests

Adequacy of representation is determined by considering whether "(1) the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) the present party is capable and willing to make such arguments; and (3) a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki, 324 F.3d at 1086.* "When an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises," and "a compelling showing should be required to demonstrate inadequate representation." *Id.*

The Nevada Secretary of State has no interest in representing or making arguments on behalf of Repair the Vote PAC. The Secretary of State has no knowledge nor likely any interest in defending the Petition, its content or legality, and will likely divest itself from taking any extraordinary measures to protect it.

Absent the opportunity to intervene, Repair the Vote PAC's interests almost certainly will not be adequately represented. Accordingly, Repair the Vote PAC is able to meet the "minimal burden" of showing that his interests are not already represented in this litigation.

First, Defendant's interests are different and distinct from Repair the Vote PAC's interests. As such, the Defendant is not likely to press fully all defenses available in this case. Nor is the Defendant likely to press against the factual assertions contained in the Complaint as

fully as they might. Repair the Vote PAC is unrestrained by constitutional concerns and can provide this Court with the full range of potential factual and legal defects in the Complaint.

Specifically, Repair the Vote PAC has reviewed the pleadings filed by the Parties. It is clear that Defendant will undoubtedly not make all the PAC's arguments; Nor is she capable and willing to make such arguments.

B. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION

If the Court nonetheless determines that Repair the Vote PAC is not entitled to intervene as of right, it should grant permissive intervention. *Nev. R. Civ P. 24(b).* Rule 24(b) authorizes the Court to grant permissive intervention to anyone who has a claim or defense that shares with the main action a common question of law or fact. A district Court has broad discretion to permit intervention. *Griffith v Univ Hosp. LLC, 249 F.3d 658, 662 (7th Cir. 2001).* The Court must determine whether a proposed intervenor's claims and the main action share a common question of fact or law and then whether the intervention will unduly delay the litigation or prejudice the original parties. *Freedom from Religion Found., Inc. v. Geithner, 644 F.3d 836, 843 (9th Cir. 2011). Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998).*

Intervenor's proposed Answer includes defenses and legal arguments that rely on the same facts and legal claims set forth in the Complaint, permissive intervention is appropriate here. NRCP 24(b) permits intervention as follows:

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or

prejudice the adjudication of the rights of the original parties. Although provision Rule 24(b)(1) does not apply here, the remaining provisions of the rule support permissive intervention.

A. Timeless and Delay

In considering the timeliness of the intervention, the Court should consider the totality of circumstances. *NAACP v New York, 413 U.S. 345, 366 (1973),* including the length of time since the movant knew of its interest in the case, prejudice to the existing parties caused by any delay in intervening (but not delay caused by the intervention itself) prejudiced to the proposed intervenor, and the existence of any unusual circumstances, *United Nuclear Corp. v Cannon, 696 F.2d 141, 143 (1st Cir. 1982)*

As is stated above, Intervenor is filing this motion as soon as possible following the filing of the Complaint. Intervenor submits that any additional issues he intends to raise and litigate will cause no delay in this litigation.

The movant is not required to asset a separate or additional claim or defense in order to show commonality. Instead, permissive intervention is appropriate where the proposed "intervenor's defense raises the same legal questions as the defense of the named Defendants." *Miller v Silbermann, 832 F. Supp. 663, 673 (S.D.N.Y 1993).* Similarly, Repair the Vote PAC has a special interest in the resolution of this matter favoring Defendant. While, Cegavske's and the PAC's interests are different and distinct the legal issue is the same.

CONCLUSION

For the foregoing reasons, the Court should grant David Gibbs and Repair the Vote PAC's Motion to Intervene as of right, or in the alternative, permissively.

Dated this 24th day of February, 2022

CHATTAH LAW GROUP

s/ Sigal Chattah

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Attorney for Proposed Intervenor

DECLARATION OF DAVID G. GIBBS

I, DAVID G. GIBBS, declare as follows:

1. I am a submitting this Declaration in Support of Motion to Intervene, individually and on behalf of Repair the Vote PAC.

2. On January 28, 2022, I signed and filed a Notice of Intent to Circulate Statewide Initiative or Referendum Petitions on behalf of Repair the Vote PAC.

3. This Notice was filed in reference to two matters, to wit:1) Constitutional Amendment, Article 2 of the Nevada Constitution re: Voter Identification; and 2) Referendum to approve/disapprove selected provisions of Assembly Bill 321.

4. This Motion to Intervene on behalf of Defendants is filed for the purposes of participating in the litigation of these cases, as Repair the Vote PAC was omitted from this litigation.

5. Repair the Vote PAC claims an interest relating to this litigation that is the subject of the action, and is so situated that disposing of the action may as a practical matter impairs or impede the PAC's ability to protect its interest, unless existing parties adequately represent that interest.

6. Defendant Cegasvke in her capacity as Nevada Secretary of State has no vested interest in protecting the initiatives that are the subject of this litigation and it is likely that the PAC's interests will not be adequately represented accordingly.

7. This Motion was filed in a timely manner as the pending Complaint was filed on February 18, 2022.

8. Neither parties will suffer any prejudicial effect of the PAC's intervention in this action

9. Further Affiant sayeth naught.

Dated this 25th day of February, 2022

DAVID G. GIBBS

EXHIBIT "A"

received
Jan. 28, 2022

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

State of Nevada — *Secretary of State Barbara K. Cegavske*

Pursuant to NRS 295.015, before a petition for initative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

David G. Gibbs

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. David G. Gibbs
2.
3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Repair the Vote

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X _____ 28 Jan 22

Signature of Petition Filer — **Date**

REFERENDUM ON THE PROVISION RELATED TO CHANGES IN VOTING PROVISIONS FROM ASSEMBLY BILL 321 OF THE 2021 LEGISLATIVE SESSION

Explanation – Matter in *bolded italics* and matter in brackets [~~omitted material~~] is the material from the specified sections of Assembly Bill 321 to be considered for the approval or disapproval in this referendum.

The People of the State of Nevada do enact as follows:

FULL TEXT OF THE PROPOSED MEASURE

Section 1. Section 3 of Assembly Bill 321 of the 2021 Legislative Session:

Sec. 3. ***1. Except as otherwise provided in this section, the county clerk shall prepare and distribute to each active registered voter in the county and each person who registers to vote or updates his or her voter registration information not later than the 14 days before the election a mail ballot for every election. The county clerk shall make reasonable accommodations for the use of the mail ballot by a person who is elderly or disabled, including, without limitation, by providing, upon request, the absent ballot in 12-point type to a person who is elderly or disabled.***

2. The county clerk shall allow a voter to elect not to receive a mail ballot pursuant to this section by submitting to the county clerk a written notice in the form prescribed by the county clerk which must be received by the county clerk not later than 60 days before the day of the election.

3. The county clerk shall not distribute a mail ballot to any person who:

(a) Registers to vote for the election pursuant to the provisions of NRS 293.5772 to 293.5887, inclusive; or

(b) Elects not to receive a mail ballot pursuant to subsection 2.

4. The mail ballot must include all offices, candidates and measures upon which the voter is entitled to vote at the election.

5. Except as otherwise provided in subsections 2 and 3, the mail ballot must be distributed to:

(a) Each active registered voter who:

(1) Resides within the State, not later than 20 days before the election; and

(2) Except as otherwise provided in paragraph (c), resides outside the State, not later than 40 days before the election.

(b) Each active registered voter who registers to vote after the dates set for distributing mail ballots pursuant to paragraph (a) but who is eligible to receive a mail ballot pursuant to subsection 1, not later than 13 days before the election.

(c) Each covered voter who is entitled to have a military-overseas ballot transmitted pursuant to the provisions of chapter 293D of NRS or the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 et seq., not later than the time required by those provisions.

6. In the case of a special election where no candidate for federal office will appear on the ballot, the mail ballot must be distributed to each active registered voter not later than 15 days before the special election.

7. Any untimely legal action which would prevent the mail ballot from being distributed to any voter pursuant to this section is moot and of no effect.

Section 2. Section 4 of Assembly Bill 321 of the 2021 Legislative Session:

Sec. 4. ***1. Except as otherwise provided in subsection 2, section 3 of this act and chapter 293D of NRS, the county clerk shall send to each active registered voter by first-class mail, or by any class of mail if the Official Election Mail logo or an equivalent logo or mark created by the United States Postal Service is properly placed:***

(a) A mail ballot;

(b) A return envelope;

(c) An envelope or sleeve into which the mail ballot is inserted to ensure its secrecy; and

(d) Instructions.

~~(e) Submits or has previously submitted a written request for an absent ballot that is signed by the registered voter before a notary public or other person authorized to administer an oath;~~
~~(f) Requests an absent ballot in person at the office of the county clerk;~~

Section 7. Section 51 of Assembly Bill 321 of the 2021 Legislative Session:

Sec. 51. 1. Except as otherwise provided in this section, the city clerk shall prepare and distribute to each active registered voter in the city and each person who registers to vote or updates his or her voter registration information not later than the 14 days before the election a mail ballot for every election. The city clerk shall make reasonable accommodations for the use of the mail ballot by a person who is elderly or disabled, including, without limitation, by providing, upon request, the mail ballot in 12-point type to a person who is elderly or disabled.

2. The city clerk shall allow a voter to elect not to receive a mail ballot pursuant to this section by submitting to the city clerk a written notice in the form prescribed by the city clerk which must be received by the city clerk not later than 60 days before the day of the election.

3. The city clerk shall not distribute a mail ballot to any person who:

(a) Registers to vote for the election pursuant to the provisions of NRS 293.5772 to 293.5887, inclusive; or

(b) Elects not to receive a mail ballot pursuant to subsection 2.

4. The mail ballot must include all offices, candidates and measures upon which the voter is entitled to vote at the election.

5. Except as otherwise provided in subsections 2 and 3, the mail ballot must be distributed to:

(a) Each active registered voter who:

(1) Resides within the State, not later than 20 days before the election; and

(2) Except as otherwise provided in paragraph (b), resides outside the State, not later than 40 days before the election.

(b) Each active registered voter who registers to vote after the dates set for distributing mail ballots pursuant to paragraph (a) but who is eligible to receive a mail ballot pursuant to subsection 1, not later than 13 days before the election.

(c) Each covered voter who is entitled to have a military-overseas ballot transmitted pursuant to the provisions of chapter 293D of NRS or the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 et seq., not later than the time required by those provisions.

6. In the case of a special election where no candidate for federal office will appear on the ballot, the mail ballot must be distributed to each active registered voter not later than 15 days before the special election.

7. Any untimely legal action which would prevent the mail ballot from being distributed to any voter pursuant to this section is moot and of no effect.

Section 8. Section 52 of Assembly Bill 321 of the 2021 Legislative Session:

Sec. 52. 1. Except as otherwise provided in subsection 2, section 51 of this act and chapter 293D of NRS, the city clerk shall send to each active registered voter by first-class mail, or by any class of mail if the Official Election Mail logo or an equivalent logo or mark created by the United States Postal Service is properly placed:

(a) A mail ballot;

(b) A return envelope;

(c) An envelope or sleeve into which the mail ballot is inserted to ensure its secrecy; and

(d) Instructions.

2. In sending a mail ballot to an active registered voter, the city clerk shall use an envelope that may not be forwarded to an address of the voter that is different from the address to which the mail ballot is mailed.

3. The return envelope must include postage prepaid by first-class mail if the active registered voter is within the boundaries of the United States, its territories or possessions or on a military base.

4. Before sending a mail ballot to an active registered voter, the city clerk shall record:

(a) The date the mail ballot is issued;

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ERIC JENG, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Defendants.	Case No:22DC00023-B Dept No.: II [PROPOSED ANSWER]

INTERVENORS' ANSWER TO COMPLAINT

COME NOW, Defendant/Intervenor DAVID G. GIBBS individually and on behalf of REPAIR THE VOTE PAC by and through the undersigned attorney of record, SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP who hereby answer Plaintiffs as intervenor follows:

1. Defendants admit paragraphs 1, 2 and 5,7, 11 of Plaintiffs' Complaint.

2. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraphs 3, 6, 8-10 of the Plaintiffs' Complaint and therefore denies same.

3. As to the First Cause of Action, Defendants deny the allegations contained in Paragraph 12 through 22 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim against Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff did not exercise ordinary care, caution or prudence for the protection of themselves and any damages complained of by the Defendants in their claim was directly or proximately caused or contributed to by the fault, failure to act, carelessness and negligence of Plaintiff's Complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails for insufficiency of service of process.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's allegations as set forth in the Complaint are barred by Plaintiffs' unclean Hands.

FIFTH AFFIRMATIVE DEFENSE

Defendants at all times relevant to the allegations contained in Complaint, acted with due care and circumspection in the performance of any and all duties imposed on them.

SIXTH AFFIRMATIVE DEFENSE

Defendants allege that the Plaintiff failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

That it has been necessary of the Defendants to employ the services of an attorney to defend the action and a reasonable sum should be allowed Defendants for attorney's fees, together with costs of suit incurred herein.

EIGHTH AFFIRMATIVE DEFENSE

Rescission bars enforcement of any agreement between Plaintiff and Defendants.

NINTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer, and therefore, Defendants reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's allegations are barred by the doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff have waived the right to bring the Defendants herein and to assert the claims herein.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff allegations are barred by the Statute of Frauds

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff are estopped from bringing the claims and allegations in the Plaintiff Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

At all times mentioned there was, has been and continues to be a material failure of consideration on the part of Plaintiff herein, as a consequence of which failure this answering Defendants' duty of performance has been discharged.

FIFTEENTH AFFIRMATIVE DEFENSE

This answering Defendants are informed and believe, and thereon allege, that Plaintiff herein lacks standing to bring said action against this answering Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

No justiciable controversy exists between Plaintiffs and Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have released and discharged Defendant from any liability by virtue of Plaintiff's own acts or omissions.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's allegations as set forth in the Complaint misstates the terms and conditions of an agreement between the parties.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to cure procedural prerequisites prior to commencing this suit.

TWENTIETH AFFIRMATIVE DEFENSE

Defendants deny each and every allegation of Plaintiff's Complaint not specifically admitted or otherwise pleaded herein.

TWENTY FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Statute of Limitations and/or Statute of Repose.

WHEREFORE, Defendants pray as follows:

1. That Plaintiff takes nothing by way of the Complaint on file herein;

2. For reasonable attorney's fees and costs of suit incurred herein;

3. For such other and further relief as the Court may deem just and proper.

Dated this 24th day of February, 2022.

CHATTAH LAW GROUP

/s/

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IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

ERIC JENG, an individual, Plaintiff, vs. BARBARA CEGAVSKE, in her official capacity as NEVADA SECRETARY OF STATE, Defendants.	Case No:22 OCC00231 Dept. No: II **INITIAL APPEARANCE FEE DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

DAVID G GIBBS	Defendant	$218.00
TOTAL REMITTED:		$218.00

Dated this 15 day of February, 2022

CHATTAH LAW GROUP

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