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January 4, 2021

VIA EMAIL

Ms. Lulu Friesdat
Ms. Holly Mosher
Mr. Jim Soper
SMART Elections
contact@smartelections.us
hollywoodnt@mac.com

Re: False Accusations Regarding Election Systems & Software, LLC

Dear Ms. Friesdat, Ms. Mosher, and Mr. Soper,

We have been retained to represent and advise Election Systems & Software, LLC (“ES&S”) in connection with false accusations you have made against ES&S on behalf of SMART Elections (“SE”), an alleged non-partisan “project.” Those accusations, some of which are described below, constitute both defamation and trade disparagement. We demand that you immediately and permanently cease and desist from communicating false allegations about ES&S, and immediately retract and correct the false, defamatory and disparaging accusations you have made against ES&S.

You have recently published posts on SE’s website and sent emails on behalf of SE alleging that ES&S’s voting machine, the “ExpressVote XL,” can “add,” “delete,” or “change” the votes on individual ballots and that the ExpressVote XL machine will “deteriorate our security and our ability to have confidence in our elections.” Additionally, in an email, you characterized the ExpressVote XL as a “bad voting machine” that “cannot count accurately.” The public postings suggest that you are making similar defamatory and disparaging comments about ES&S to others in the community via web conferences and virtual meetings.

Your allegations about ExpressVote XL are false and irresponsible. The ExpressVote XL voting machine, like all of ES&S’s voting systems, has undergone stringent testing and been certified by multiple states and the Federal Election Assistance Commission. ES&S uses federally accredited independent third-party testing authorities to thoroughly test and confirm the accuracy, reliability, and security of its voting systems, including the ExpressVote XL. The ExpressVote XL uses both barcodes *and* human-readable text to ensure the accuracy of votes. All ExpressVote XL ballots are fully auditable.

In your public statements, you have insinuated that the ExpressVote XL was to blame for problems which occurred in the counting of some votes during the 2019 election in Northampton County, Pennsylvania. That is utterly false. Northampton County has itself publicly stated that the problems were due to the “result of a human error in formatting the ballot” and “a misalignment in the database.” Indeed, the ExpressVote XL machine was tested and approved twice during the 2020 election year in Pennsylvania. Your insinuation that Northampton County’s 2019 problems somehow support the notion that the ExpressVote XL machine is untrustworthy is irresponsible.

The allegations you and SE have made and continue to make about ES&S and the ExpressVote XL are *utterly false* and *unsupported*. These allegations are very serious and have harmed ES&S and threaten to interfere with the ExpressVote XL’s certification for use in elections in New York State. Should your unjustified and malicious attempts to prevent the ExpressVote XL’s certification succeed, ES&S may lose significant revenue in the form of lost sales for which ES&S will seek compensatory and punitive damages.

Additionally, we note that SMART Elections appears to be an unincorporated entity. If that is the case, ES&S will not hesitate to hold each of you, and others who are responsible for the dissemination of these false and defamatory accusations, personally and individually liable. If, indeed, SMART Elections is an unincorporated entity, this appears to be at odds with statements that you and others have made while soliciting donations ostensibly on behalf of SE. Regardless of SE’s corporate status, your propensity for making false and misleading statements is apparent in your solicitation efforts as you have incorrectly classified SE as a “literary arts” project and failed to disclose on the SE website that SE is a sponsored project of a “non-profit arts service organization” as required.

On behalf of ES&S, we demand that you immediately cease such conduct, and retract and correct your previous statements by prominently posting corrections to your website and emailing all of those to whom you have previously sent emails regarding ES&S and the ExpressVote XL. ES&S is prepared to pursue all remedies in law and equity.

All rights reserved.

Very truly yours,



Alan S. Lewis

ASL:mkw

cc: **VIA EMAIL**

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