

1 JOHN EICHHORST (No. 139598)  
Email: jeichhorst@howardrice.com  
2 MICHAEL L. GALLO (No. 220552)  
Email: mgallo@howardrice.com  
3 JASON S. TAKENOUCI (No. 234835)  
Email: jtakenouchi@howardrice.com  
4 D'LONRA C. ELLIS (No. 239623)  
Email: dellis@howardrice.com  
5 HOWARD RICE NEMEROVSKI CANADY  
FALK & RABKIN  
6 A Professional Corporation  
Three Embarcadero Center, 7th Floor  
7 San Francisco, California 94111-4024  
Telephone: 415/434-1600  
8 Facsimile: 415/217-5910

9 LOWELL FINLEY (No. 104414)  
Email: lfinley@wwc.com  
10 LAW OFFICES OF LOWELL FINLEY  
1605 Solano Avenue  
11 Berkeley, California 94707  
Telephone: 510/290-8823  
12 Facsimile: 415/723-7141

13 Attorneys for Plaintiffs/Petitioners

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 CITY AND COUNTY OF SAN FRANCISCO

17 JOSEPH HOLDER, PETER CANTISANI,  
DOLORES HUERTA, JUDY BERTELSEN,  
18 CHARLES L. KRUGMAN, DAVID  
HAGUE GOGGIN, ALYCE E. FRET LAND,  
19 HELEN ACOSTA, MARY C. KENNEDY,  
CHARLES FOX, MARTY KRASNEY,  
20 MITCH CLOGG, BEN P. VAN METER,  
NANCY TILCOCK, CHARLES O.  
21 LOWERY, JR., LILLIAN RITT,  
HAROLD C. CASE, SUSAN J. CASE,  
22 KENNETH MARTIN STEVENSON,  
LARRY MARKS, HARRY JOHN RAPF,  
23 MERRILEE DAVIES, BERNICE M.  
KANDARIAN, VICTORIA POST, and  
24 VERONICA ELSEA, individuals,

25 Plaintiffs/Petitioners,

26 v.

27 (see following page)  
28

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 08 2006

GORDON PARK-LI, Clerk  
BY WEGLEY RAMIREZ Deputy Clerk

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

No. CPF 06-506171

Action Filed: March 21, 2006

Action Remanded to this Court:  
July 17, 2006

DECLARATION OF BRIAN C. BAER  
IN SUPPORT OF PETITION FOR WRIT  
OF MANDATE AND MOTION FOR  
PRELIMINARY INJUNCTION

Date: August 31, 2006  
Time: 9:30 a.m.  
Dep't: 302  
Judge: Hon. Ronald E. Quidachay

Trial Date: None Set

1 BRUCE MCPHERSON, as California  
2 Secretary of State; ELAINE GINNOLD, as  
3 Elections Official of Alameda County;  
4 CANDACE J. GRUBBS, as Elections  
5 Official of Butte County; VICTOR E.  
6 SALAZAR, as Elections Official of Fresno  
7 County; ANN BARNETT, as Elections  
8 Official of Kern County; THERESA NAGEL,  
9 as Elections Official of Lassen County;  
10 CONNY McCORMACK, as Elections  
11 Official of Los Angeles County; MARSHA  
12 WHARFF, as Elections Official of  
13 Mendocino County; MAXINE MADISON, as  
14 Elections Official of Modoc County;  
15 KATHLEEN WILLIAMS, as Elections  
16 Official of Plumas County; MIKEL HASS, as  
17 Elections Official of San Diego County;  
18 DEBBIE HENCH, as Elections Official of  
19 San Joaquin County; COLLEEN BAKER, as  
20 Elections Official of Siskiyou County; and  
21 DOES 1 through 50,

22 Defendants/Respondents.

23  
24  
25  
26  
27  
28  
HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN

A Professional Corporation

1 I, Brian C. Baer, declare as follows:

2 1. I am a registered voter in the State of California. I reside in Cardiff, California,  
3 which is located in San Diego County. Except as otherwise indicated, this declaration is  
4 based on my personal knowledge, and if called as a witness, I could and would testify  
5 competently to the matters contained in it.

6 2. I was employed as a Software Development Manager at Hewlett-Packard  
7 Company from November 1982 to May 2005. I took their severance package last year and  
8 am finishing remodeling my house, but am currently unemployed. I received a bachelor's  
9 degree in Computer Science from Cal Poly, San Luis Obispo in September 1982.

10 3. In mid-May 2006 the San Diego County Registrar of Voters sent me a letter  
11 asking if I was willing to act as a poll worker for the June 6, 2006, election. I called the  
12 Registrar's office about this request, and thereafter was asked to serve as an Assistant  
13 Precinct Inspector - Equipment and was assigned to a training session on May 30, 2006. I  
14 do not know if the Registrar performed any background checks on me prior to selecting me  
15 as a poll worker, other than to verify that I was a registered voter.

16 4. The May 30 training was attended by approximately 50 people. The training,  
17 which lasted about 2 1/2 hours, was the only training I had prior to the June 6 election. The  
18 discussion included the Diebold AV-TSx and the AccuView Printer Module, but this was  
19 mainly a hands-on class making sure we knew how to setup and tear down the touch screen  
20 systems. Security of these systems was certainly not stressed. In fact it appeared to me that  
21 these systems were running Windows, an operating system with known security problems.

22 5. During the training session there were only a few discussions of security issues,  
23 and those discussions focused on the plastic locks on some portions of the AV-TSx. For  
24 example, we were not instructed on how to securely store the AV-TSx, how to prevent  
25 tampering on Election Day, or how to spot tampering prior to Election Day.

26 6. During the training session I was told about the security seals on the memory card  
27 slot of the AV-TSx. I was instructed that I was to take down the serial number of these  
28 seals, and verify that they had not been broken prior to their use on June 6.

1           7. At the conclusion of the training session each attendee was given two AV-TSx  
2 machines to take home. One machine was for the encoding of the voting cards (e.g., to place  
3 the ballot for the various party choices, 11 in each supported language, on the voting card);  
4 the other was for the recording of voters' votes. These machines were the same ones to be  
5 used during the June 6 election. Because I expected that the machines would be stored in a  
6 secure location until election day, I was surprised when we were given these machines to  
7 take home.

8           8. Each attendee was also given a separate package with two printer modules.  
9 Based on the instructions given at the training, these modules were to be attached to the AV-  
10 TSx on election day.

11           9. I stored my two AV-TSx machines in my garage in the days between May 30 and  
12 June 6. I find it disturbing that I was given unfettered access to these electronic voting  
13 machines in the days leading up to the June 6 election.

14           10. On June 6, 2006, I served as Assistant Precinct Inspector—Equipment for the  
15 California primary election. I was assigned to Precinct 409650.

16           11. The morning of June 6 I brought the AV-TSx machines and printer modules to  
17 the precinct polling site, which was located at 7918 Via Callendo, Carlsbad, California,  
18 92009.

19           12. Our polling site had a mixture of AV-TSx machines and paper ballots. Paper  
20 ballots were passed through an optical scan machine. The Precinct Inspector and Assistant  
21 Precinct Inspector set up 5 booths for paper voting. The AV-TSx machine that was designed  
22 for recording votes was separate from these non-electronic booths.

23           13. I personally set up the AV-TSx machines. Each machine required 20 to 30  
24 minutes to set up. Had I had six AV-TSx voting machines instead of a single machine, it  
25 would have taken me two or more hours to set up these additional machines.

26           14. I attached the AccuView Printer Module to the AV-TSx voting machine. When  
27 the unit is attached, there is a panel that covers the viewing window for the paper audit trail.  
28 I believe the panel on our precinct's AV-TSx printer remained over the viewing window

1 throughout the day on June 6, 2006. Attached hereto as Exhibit 1 is a true and correct copy  
2 of page 23 of the Poll Worker Election Guide that I received on May 30. Exhibit 1 shows  
3 that the paper trail viewing window has a cover that the voter must lift to view his or her  
4 vote.

5 15. Before turning on the AV-TSx machines on June 6, I visually inspected the seals  
6 on the memory card covers. The actual memory card was in a slot behind this plastic cover.  
7 I did not have any guidelines for assessing whether anyone had tampered with the seal.

8 16. No voter used the AV-TSx in our precinct on June 6. Every voter, including at  
9 least one disabled voter, used the paper ballots instead.

10 17. After the polls closed I was supposed to "break" the seals for the AV-TSx  
11 memory cards. However, these seals did not actually break when I removed the memory  
12 cards from the machines. The seals were attached to the machine by adhesive, and when I  
13 pulled the plastic cover from the machines the seals remained intact. Based on the ease with  
14 which I removed these seals intact, I believe it would be easy for someone to detach the seal,  
15 access the memory card or use the memory card slot to access the voting machine itself, and  
16 then replace the seal using glue or another adhesive. I believe I would not have spotted such  
17 tampering based on my visual inspection of the seal.

18 18. Based on my experience as a poll worker, I believe that poll workers cannot  
19 ensure a secure electronic voting environment, in addition to performing the other duties that  
20 are required on Election Day, without more extensive training and additional help.

21 19. Based on my experience with the AV-TSx, I am convinced that its use in  
22 California elections undermines my confidence in the accuracy of the vote and in the  
23 election process itself.

24 20. I declare under penalty of perjury under the laws of the State of California that  
25 the foregoing is true and correct. Executed this <sup>24</sup> day of July, 2006 at Cardiff, California.

26  
27   
28 Brian C. Baer