

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-LL, Clerk
BY WESLEY RAMIREZ
Deputy Clerk

No. CPF 06-506171

Action Filed: March 21, 2006

Action Remanded to this Court:
July 17, 2006

NOTICE OF MOTION AND MOTION
FOR PETITION FOR WRIT OF
MANDATE AND 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.

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HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on Thursday, August 31, 2006, at 9:30 a.m. in
3 Department 302, or as soon thereafter as this matter may be heard by the above-entitled
4 court, located at 400 McAllister Street, San Francisco, California, Plaintiffs and Petitioners
5 Joseph Holder, Peter Cantisani, Dolores Huerta, Judy Bertelsen, Charles L. Krugman, David
6 Hague Goggin, Alyce E. Fretland, Helen Acosta, Mary C. Kennedy, Charles Fox, Marty
7 Krasney, Mitch Clogg, Ben P. Van Meter, Nancy Tilcock, Charles O. Lowery, Jr., Lillian
8 Ritt, Harold C. Case, Susan J. Case, Kenneth Martin Stevenson, Larry Marks, Harry John
9 Rapf, Merrilee Davies, Bernice M. Kandarian, Victoria Post, and Veronica Elsea
10 (collectively "Petitioners") will, and hereby do, move this Court to issue: (1) a Writ of
11 Mandate ordering Defendant/Respondent Secretary of State to rescind his February 17, 2006
12 approval of the Diebold AccuVote-TSx ("AV-TSx") voting system; (2) a Writ of Mandate
13 ordering Defendant/Respondent Secretary of State to not approve any AV-TSx systems
14 which do not comply with state law; (3) a Writ of Mandate ordering
15 Defendants/Respondents County Elections Officials to not purchase or lease, or contract for
16 the purchase or lease of, the AV-TSx voting system approved by the Secretary of State on
17 February 17, 2006; (4) a Writ of Mandate ordering Defendants/Respondents County
18 Elections Officials to not purchase or lease, or contract for the purchase or lease of, any
19 AV-TSx systems which do not comply with state law; (5) a preliminary injunction barring
20 Respondent County Elections Officials from using the AV-TSx voting system in the
21 November 7, 2006 general election; and (6) a preliminary injunction barring Respondent
22 County Elections Officials from contracting for or purchasing the AV-TSx for use in the
23 November 7, 2006 general election.

24 As set out in the accompanying Memorandum of Points and Authorities, the California
25 Secretary of State's certification of this uncertifiable electronic voting system was made in
26 error and, unless a writ of mandate issues, millions of California voters will have to suffer
27 for that error. A preliminary injunction is also warranted because Petitioners and other
28 California voters will suffer irreparable harm to their fundamental rights if the AV-TSx

1 system is used in the upcoming general election; there is undisputed evidence that the voting
2 system at issue is illegal under the California Elections Code; legal, alternative systems are
3 available; and the public has a compelling interest in preserving the reliability, accuracy, and
4 legitimacy of the elections process.

5 This Motion is based on this Notice of Motion and Motion; the accompanying
6 Memorandum of Points and Authorities; the accompanying Declarations filed in support
7 thereof; the proposed Order submitted herewith; Petitioners' reply brief in support of their
8 Motion; all pleadings and papers on file in this Action; and such other and further oral and
9 written submissions as may be presented to the Court at the time of hearing.

10
11 DATED: August 7, 2006.

12 Respectfully,

13 JOHN EICHHORST
14 MICHAEL L. GALLO
15 JASON S. TAKENOUCI
16 D'LONRA C. ELLIS
17 HOWARD RICE NEMEROVSKI CANADY
18 FALK & RABKIN
19 A Professional Corporation

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By: _____



MICHAEL L. GALLO

Attorneys for Plaintiffs/Petitioners

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation