

1 BILL LOCKYER
Attorney General of the State of California
2 CHRISTOPHER AMES
Senior Assistant Attorney General
3 LARRY G. RASKIN
Supervising Deputy Attorney General
4 MELINDA VAUGHN, SBN 120446
Deputy Attorney General
5 MICHELE M. DeCRISTOFORO, SBN 166242
Deputy Attorney General
6 IAN K. SWEEDLER, SBN 169969
Deputy Attorney General
7 1300 I Street
P.O. Box 944255
8 Sacramento, CA 94244-2550
Telephone: 916/324-7873
9 Fax: 916/323-6882

10 **Attorneys for Plaintiffs, PEOPLE OF THE STATE**
OF CALIFORNIA and BILL LOCKYER,
11 **ATTORNEY GENERAL OF**
THE STATE OF CALIFORNIA
12

13 **ADDITIONAL PLAINTIFFS' COUNSEL LISTED**
ON NEXT PAGE
14

15
16 SUPERIOR COURT OF CALIFORNIA
17 COUNTY OF ALAMEDA
18

19 THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through
20 California Attorney General Bill Lockyer
and Alameda County District Attorney
21 Thomas J. Orloff, and the COUNTY OF
ALAMEDA,

22 Plaintiffs,

23 vs.

24 DIEBOLD ELECTION SYSTEMS, INC., a
Delaware corporation; DIEBOLD,
25 INCORPORATED, an Ohio corporation;
and DOES 1 through 1000, inclusive,
26

27 Defendants.
28

CASE NO. RG 03128466

**[PROPOSED] STIPULATED FINAL
JUDGMENT AND PERMANENT
INJUNCTION**

1 THOMAS J. ORLOFF
2 District Attorney of the County of Alameda
3 CHRISTOPHER G. CARPENTER, SBN 40715
4 Assistant District Attorney
5 ANTHONY P. DOUGLAS, SBN 118210
6 Deputy District Attorney
1225 Fallon Street, 9th Floor
Oakland, CA 94612
Telephone: (510) 272-6222
Facsimile: (510) 569-0505

7 **Attorneys for Plaintiffs, PEOPLE OF**
8 **THE STATE OF CALIFORNIA**

8 RICHARD E. WINNIE
9 County Counsel of the County of Alameda
10 NANCY FENTON, SBN 73343
11 Deputy County Counsel
1221 Oak Street, Room 450
Oakland, CA 94612
Telephone: (510) 272-6700
Facsimile: (510) 272-5020

13 **Attorneys for Plaintiff,**
14 **COUNTY OF ALAMEDA**

14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 Plaintiffs the STATE OF CALIFORNIA (“CALIFORNIA”), ALAMEDA COUNTY and
2 the PEOPLE of the STATE OF CALIFORNIA (“PEOPLE”), have filed their complaint and
3 appeared through their attorneys, the CALIFORNIA ATTORNEY GENERAL (“ATTORNEY
4 GENERAL”) on behalf of CALIFORNIA and the PEOPLE, the ALAMEDA COUNTY
5 DISTRICT ATTORNEY on behalf of the PEOPLE, and the ALAMEDA COUNTY COUNSEL,
6 on behalf of ALAMEDA COUNTY (collectively the “Settling Plaintiffs”), and defendants
7 DIEBOLD, INCORPORATED (“DIEBOLD”) and DIEBOLD ELECTION SYSTEMS, INC.
8 (“DESI”) (collectively the “Settling Defendants”), have appeared through their attorneys JONES
9 DAY and BRYAN CAVE LLP. Settling Plaintiffs and Settling Defendants have stipulated
10 under the Stipulation for Entry of Final Judgment and Permanent Injunction (“Stipulation”) that
11 this Stipulated Final Judgment and Permanent Injunction (“Judgment”) may be entered without
12 taking proof; without the Stipulation and Judgment constituting evidence of any issue of law or
13 fact alleged in the First Amended Complaint; and without the Stipulation and Judgment
14 constituting an admission by any party regarding any issue of law or fact alleged in the First
15 Amended Complaint; Settling Plaintiffs and Settling Defendants having waived their right to
16 appeal; and good cause appearing,

17 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS**
18 **FOLLOWS:**

19 **1. JURISDICTION.**

20 This court has jurisdiction over the parties to this Judgment and the subject matter alleged
21 in the First Amended Complaint.

22 **2. GOOD FAITH SETTLEMENT.**

23 The Stipulation and Judgment have been reviewed by the court and found to have been
24 entered into in good faith and to be in all respects suitable and equitable. The court determines
25 that the terms of the Stipulation and Judgment are fair, adequate and reasonable under all the
26 circumstances pursuant to Government Code section 12652 subdivision (e)(2)(B).

27 **3. ENTRY OF JUDGMENT.**

28 Pursuant to the Stipulation, the parties have agreed to the entry of this Judgment.

1 **4. PAYMENTS.**

2 **4.1 Amount of Payment:** DESI will pay a total of TWO MILLION SIX HUNDRED
3 THOUSAND DOLLARS (\$2,600,000) which will be allocated as follows:

- 4 **a.** Pursuant to the FCA (Government Code section 12651, subd. (a)), the sum
5 of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to ALAMEDA
6 COUNTY.
- 7 **b.** Pursuant to the UCL (Business and Professions Code section 17206), the
8 sum of SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) to
9 the PEOPLE.
- 10 **c.** Pursuant to the UCL (Business and Professions Code section 17203), the
11 sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) to the
12 University of California, Institute of Governmental Studies, for research by
13 Professor Bruce Cain regarding: poll worker training in the use of electronic
14 voting technology; assessment of current poll worker training and
15 development of poll worker training materials with input from county
16 registrars; development and testing of training materials; and distribution of
17 model training materials.
- 18 **d.** Pursuant to the FCA (Government Code section 12651, subd. (a)), the sum
19 of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS
20 (\$1,250,000) to CALIFORNIA.

21 **4.2 Method of Payment:** DESI shall satisfy its payment obligations under
22 Paragraph 4.1 by issuing a single cashier’s or certified check in the amount of TWO MILLION
23 SIX HUNDRED THOUSAND DOLLARS (\$2,600,000). The payment shall be paid on or
24 before seven days after entry of the Judgment, and shall be made payable to the “California
25 Department of Justice Litigation Deposit Fund.” The check shall bear on its face the case name,
26 the Superior Court docket number, and the Attorney General’s internal docket number for this
27 matter: SA2004103215. The payment shall be sent to:

1 California Department of Justice
2 Attention: Melinda Vaughn
3 1300 "I" Street
4 P.O. Box 944255
5 Sacramento, CA 94244-2550

6 **4.3 Distribution by the Attorney General:** Any payments made to the Department
7 of Justice pursuant to Paragraph 4.2 shall be deposited in the Litigation Deposit Fund managed
8 by the Attorney General ("Deposit Fund"), who shall be responsible for distributing the funds as
9 provided in this Stipulation and Judgment. The funds placed in the Deposit Fund shall be
10 distributed as follows:

11 **a.** Pursuant to Paragraph 4.1.a., the sum of ONE HUNDRED THOUSAND
12 DOLLARS (\$100,000) together with actual interest accrued by the Deposit
13 Fund from the date such funds were deposited into the Deposit Fund, to
14 ALAMEDA COUNTY. The check shall be payable to ALAMEDA
15 COUNTY and bear on its face the case name and the Alameda County
16 Superior Court docket number. The payment shall be sent to:

17 County of Alameda
18 Attention: Nancy Fenton
19 Deputy County Counsel
20 1221 Oak Street, Room 450
21 Oakland, CA 94612

22 **b.** Pursuant to Government Code section 26506, the sum of THREE
23 HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000)
24 pursuant to Paragraph 4.1.b., together with actual interest accrued by the
25 Deposit Fund from the date such funds were deposited into the Deposit
26 Fund, to ALAMEDA COUNTY. The check shall be payable to the
27 Treasurer of Alameda County and bear on its face the case name and the
28 Alameda County Superior Court docket number. The payment shall be sent
to:

County of Alameda
Attention: Christopher G. Carpenter
Assistant District Attorney
1225 Fallon Street, 9th Floor
Oakland, CA 94612

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- c. Pursuant to Government Code section 26506 and Business and Professions Code section 17206 subdivision (c), the sum of THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) pursuant to Paragraph 4.1.b., together with actual interest accrued by the Deposit Fund from the date such funds were deposited into the Deposit Fund, to the State of California General Fund.
- d. Pursuant to Paragraph 4.1.c., the sum of FIVE HUNDRED THOUSAND (\$500,000) together with actual interest accrued by the Deposit Fund from the date such funds were deposited into the Deposit Fund, to Regents of the University of California.
- e. Pursuant to Paragraph 4.1.d., the sum of FOUR HUNDRED TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$412,500) to the False Claims Act Fund established pursuant to Government Code section 12652 subdivisions (g)(2) and (j), together with actual interest accrued by the Deposit Fund from the date such funds were deposited into the Deposit Fund.
- f. Pursuant to Paragraph 4.1.d., a sum to be determined by agreement between MARCH and HARRIS and the ATTORNEY GENERAL, or if no agreement can be reached, an amount ordered by the court, if any, payable to MARCH and HARRIS by a check made payable to the Law Offices of Lowell Finley Client Trust Account, for the *qui tam* plaintiffs' share pursuant to Government Code section 12652 subdivisions (g)(2) and (j), together with actual interest accrued by the Deposit Fund from the date such funds were deposited into the Deposit Fund.
- g. The balance after all payments are made pursuant to Paragraphs 4.3.a., 4.3.b., 4.3.c., 4.3.d., 4.3.e. and 4.3.f. to the fund known as the Voting Modernization Fund (Fund No. 6032), together with actual interest accrued

1 by the Deposit Fund from the date such funds were deposited into the
2 Deposit Fund.

3 ///

4 **4.4 Distribution by the Alameda County Counsel:** The ALAMEDA COUNTY
5 COUNSEL shall be responsible for any distribution and any payment to the *qui tam* plaintiffs for
6 their share, if any, of payments to ALAMEDA COUNTY under Paragraphs 4.1.a. and 4.3.a.
7 Any such payments to MARCH and HARRIS pursuant to Government Code section 12652
8 subdivisions (g)(2) and (j), shall be determined by agreement between the ALAMEDA
9 COUNTY COUNSEL and MARCH and HARRIS, or if no agreement can be reached, an amount
10 ordered by the court, if any, payable by the ALAMEDA COUNTY COUNSEL through a check
11 made payable to the Law Offices of Lowell Finley Client Trust Account, together with actual
12 interest accrued on the *qui tam* plaintiffs' share from the date of payment by the ATTORNEY
13 GENERAL to ALAMEDA COUNTY.

14 **5. QUI TAM PLAINTIFFS' EXPENSES, COSTS AND REASONABLE**
15 **ATTORNEY'S FEES.**

16 DESI shall pay to MARCH and HARRIS such amount for reasonable expenses, costs and
17 attorney's fees to which the court finds MARCH and HARRIS to be entitled, pursuant to
18 Government Code section 12652, subdivision (g)(8). Pursuant to Government Code section
19 12652, subdivision (g)(8), all expenses, costs and fees awarded against the defendant are not the
20 responsibility of CALIFORNIA, the PEOPLE or ALAMEDA COUNTY. Any amounts paid by
21 DESI pursuant to this Paragraph 5 shall be over and above the amounts DESI has agreed to pay
22 pursuant to Paragraph 4.

23 **6. INJUNCTIVE RELIEF.**

24 **6.1** The injunctive provisions of this Judgment are entered pursuant to Business and
25 Professions Code section 17203 and the court's equitable powers.

26 **6.2** For the purposes of this Judgment, the following terms have the following
27 meanings:

1 **a.** A "voting system" is the vote tabulator and all hardware, firmware, software
2 (and all firmware and software components) and peripherals that support its function, used or to
3 be used in California elections.

4 ///

5 **b.** "Official election results" are the final election results determined by the
6 county after the canvass period.

7 **c.** "Future contracts" refers to contracts DESI enters into with any California
8 county or counties for the sale of voting systems after the date Judgment is entered.

9 **d.** "Provisions for production of documents" as used in subparagraphs 6.3.h.,
10 6.3.k, 6.3.l and 6.3.m herein refers to the following:

11 **1.** The term "documents" for purposes of this subparagraph shall include
12 documents in an electronic format.

13 **2.** Upon written demand for documents by the Undersecretary to the
14 Secretary of State, the Chief Counsel to the Secretary of State or the
15 person whom the Secretary of State has designated and identified to
16 DESI in writing as the Secretary of State point person ("Secretary of
17 State Point Person") to DESI's compliance officer ("DESI's Point
18 Person"), DESI shall deliver the requested documents to the Office of
19 the Secretary of State located at 1500 11th Street, Sacramento,
20 California.

21 **3.** Documents shall be produced as follows: (a) with respect to
22 subparagraph 6.3.h., within 30 days after demand; and (b) with respect
23 to subparagraphs 6.3.k., 6.3.l. and 6.3.m., within 45 days after demand.

24 **4.** If demand for any documents is made between the date Judgment is
25 entered and January 1, 2005, the 30-day time period or 45-day time
26 period set forth in the preceding subparagraph 6.2.d.3 shall commence
27 on January 1, 2005.

28 **5.** Documents may be produced in electronic format.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6. DESI shall not be obligated to produce documents that DESI has previously produced to the Secretary of State. However, if documents requested at a later date substantially rely on documents produced at an earlier date, DESI shall be obligated to produce said documents in response to the later request, or provide a cross-reference to the documents previously produced.
- 7. In the event that the Secretary of State challenges DESI’s production and before any enforcement action is taken pursuant to this Injunction, DESI’s Point Person shall have the right to meet and confer with the Secretary of State’s Point Person within three business days of the receipt of notice of a dispute to try to clarify any ambiguities and resolve any dispute.

6.3 Pursuant to the provisions of Business and Professions Code section 17203 and the court’s equitable powers, DESI shall be enjoined as follows:

- a. Upon request by ALAMEDA COUNTY and/or Plumas County, DESI shall bear the cost of paper ballots to enable each voter in the counties of Alameda and Plumas to have the option, at his or her polling place, of casting a ballot on a paper ballot in the November 2, 2004 General Election. For purposes of this subparagraph, DESI shall bear the cost of paper ballots for up to 25% of registered voters in the counties of Alameda and Plumas.
- b. DESI shall pay for optical scan equipment and ballots for use in the November 2, 2004 General Election in the counties of Kern, San Joaquin and San Diego.
- c. DESI shall pay the cost of storing an electronic representation of each ballot cast on each touchscreen voting unit used in the November 2, 2004 General Election, in the counties of Alameda, Plumas and Los Angeles.
- d. Upon request by ALAMEDA COUNTY, DESI shall bear the cost of tamper-resistant tape (such as the serial-number tamper tape) for the November 2, 2004 General Election to secure physically any point of access through which someone could access anything other than the software voting interface.

1 e. DESI shall install and bear the cost of installing, for the November 2, 2004
2 General Election, TS firmware version 4.3.15D in counties using the AccuVote-TS, and GEMS
3 software version 1.18.19 in all California counties using DESI voting systems.

4 ///

5
6 f. Upon request by ALAMEDA COUNTY and upon 30 days notice, DESI
7 shall bear the cost of and provide 750 128-megabyte PCMCIA memory cards for ALAMEDA
8 COUNTY touchscreen units.

9 g. In the event DESI enters into future contracts with any California counties
10 for the sale of voting systems, DESI shall not deliver to any California county customers any
11 voting systems unless they are federally qualified and state certified, or unless, by written
12 agreement, DESI, the Secretary of State and County officials mutually agree that delivery may
13 occur prior to qualification and/or certification. This subparagraph shall not apply to test,
14 development or pilot programs (“test programs”), as long as the voting systems used for the test
15 programs are not used to conduct an official election. In the event DESI delivers test programs
16 and, upon completion of the testing with the test programs, determines that the test programs
17 require procedures or external controls that differ from those required with existing voting
18 systems, DESI shall advise state and local elections officials of procedures or external controls
19 that are required with respect to the test programs.

20 h. In all future contracts DESI enters into with any California counties for the
21 sale of voting systems, DESI shall set forth in writing the hardware model(s) and version(s) of
22 software and firmware that are the subject of the sale. In the event voting systems actually
23 delivered to any California county under such future contract(s) differ from those that were
24 originally specified in the contract(s), DESI shall set forth in writing the hardware model and
25 version(s) of software and firmware actually being delivered. Subject to reasonable
26 confidentiality restrictions and licensing agreements agreed upon between DESI and the
27 Secretary of State and subject to the provisions for production of documents set forth in
28 subparagraph 6.2.d., DESI shall produce future contracts entered into with any California county

1 for the sale of voting systems, as well as notice of hardware and version(s) of software actually
2 delivered to any California county, as required by this subparagraph 6.3.h.

3 **i.** In all future contracts DESI enters into with any California counties for the
4 sale of voting systems, DESI shall offer to provide to county personnel and such third parties as
5 the County may designate, one set of training materials in hard copy or electronic format
6 regarding physical security measures to be taken to safeguard the voting systems, and shall
7 authorize the county or third party to reproduce such training materials. Nothing in this
8 subparagraph 6.3.i. shall relieve DESI from contractual obligations to provide additional or
9 different training materials to California counties.

10 **j.** No later than 30 days after entry of Judgment, DESI shall offer to provide to
11 each California county in which DESI voting systems will be used in California elections, one
12 set of training materials in hard copy or electronic format for hands-on training in the use of
13 DESI voting systems, and shall authorize the county to reproduce such materials. DESI shall be
14 under a continuing obligation to update such materials as needed. Nothing in this subparagraph
15 6.3.j. shall relieve DESI from contractual obligations to provide additional or different materials
16 to California counties.

17 **k.** Subject to reasonable confidentiality restrictions and licensing agreements
18 agreed upon between DESI and the Secretary of State and subject to the provisions for
19 production of documents set forth in subparagraph 6.2.d., DESI shall produce documentation
20 describing the materials, equipment, programs, and procedures, including source code, scripts,
21 and data files, required to develop, install or operate any software, firmware or hardware used in
22 the voting system. In complying with this provision, DESI must only produce documents and
23 information in existence at the time of demand and is not obligated to create additional
24 documentation other than what may be needed to satisfy the identification requirements of this
25 subparagraph 6.3.k. To the extent any materials to be provided pursuant to this subparagraph are
26 protected by copyright or other applicable intellectual property rights owned or controlled by
27 third parties, DESI is not obligated to produce those materials if such production would violate
28 those third party rights, nor is DESI obligated to secure such rights to enable production. In

1 responding to a request for information under this subparagraph, DESI will be considered to
2 have satisfied the requirements if it produces the following material:

3 **1. Development:**

- 4 **a.** Identification of the source and version/model of all software,
5 hardware or supplemental data files or scripts necessary for the
6 development and production of the installation version of the
7 voting system, including compilers, translators, library build,
8 configuration management system, and testing programs.
- 9 **b.** Source files, scripts, and data files such as makefiles needed to
10 build the installation version or sub-components such as libraries
11 that are part of the build.
- 12 **c.** Documentation listing and identifying the files and components,
13 from the development stage, and their relationship with each other
14 that will be used to install and operate the system.
- 15 **d.** Installation guides, procedures, and instructions that are needed to
16 create the installation version or setup the programs used to create
17 the installation version.
- 18 **e.** Standards and quality control programs, scripts, guidelines, and
19 procedures applied in creating the voting system.

20 **2. Installation:**

- 21 **a.** Identification of the source and version/model of all software,
22 firmware, hardware, or supplemental data files or scripts necessary
23 to install the DESI voting system and its supporting components
24 including COTS or third-party contracted utilities and operating
25 system components.
- 26 **b.** Scripts, parameter files, data files, and other files needed to install
27 and configure the voting system.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. Installation guides, procedures, and instructions that are needed by a new user to install the voting system.

3. Operation:

- a. Identification of the source and version/model of all software, hardware, supplemental data files, scripts, library files, or executable modules necessary to operate the voting system and conduct an election including COTS or third-party contracted utilities and operating system components.
- b. Scripts, parameter files, and data files needed to operate the voting system or supporting utilities.
- c. User guides, maintenance guides, security guidelines, procedures, and instructions that are needed to describe the operation of the voting system and supporting peripherals, utilities, or processes in defining, configuring, programming, performing quality checks, and conducting an election and reporting the outcome of the election.

I. Subject to reasonable confidentiality restrictions and licensing agreements agreed upon between DESI and the Secretary of State and subject to the provisions for production of documents set forth in subparagraph 6.2.d., DESI shall produce the following documents submitted to or resulting from the federal testing and qualification or requalification process regarding voting systems:

- 1.** The Technical Data Package as defined in Voting Systems Standards, 2002 (VSS-2002), Vol. II, Section 2, which is comprised of:
 - a. System configuration overview [VSS-2002, Section 2.2];
 - b. System functionality description [VSS-2002, Section 2.3];
 - c. System hardware specifications [VSS-2002, Section 2.4];
 - d. Software design and specifications [VSS-2002, Section 2.5];

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- e. System test and verification specifications [VSS-2002, Section 2.7];
 - f. System security specifications [VSS-2002, Section 2.6];
 - g. User/system operations procedures [VSS-2002, Section 2.8] including the versions of the California Procedures provided for each release;
 - h. System maintenance procedures [VSS-2002, Section 2.9];
 - i. Personnel deployment and training requirements [VSS-2002, Section 2.10];
 - j. Configuration management plan [VSS-2002, Section 2.11];
 - k. Quality assurance program [VSS-2002, Section 2.12]; and
 - l. System change notes which include both the “description of the contents of a system release, and the procedures and related conventions by which the vendor installs, transfers, or migrates the system to ITAs..... ”[VSS-2002, Vol II, Section 2.11.5, Release Process] as well as the required documents of Section 2.13, System Change Notes for each release.
2. Test reports in DESI’s possession, both published final and intermediate status report showing discovered deficiencies and resolution steps, from Ciber, Wyle, SysTest, or other certified test laboratories performing VSS 1990/2002-required tests (e.g., FCC Part 15 tests), and all addenda, supplements and amending releases, for the following voting systems submitted for certification in the State of California or in use in the State of California:
- a. Diebold GEMS and AccuVote TouchScreen models;
 - b. AccuVote Optical Scan;
 - c. The supporting peripheral and stand-alone devices and software packages, including the:

- i.** Voter Card Encoder (VCE);
- ii.** VC Programmer;
- iii.** Key Card Tool;
- iv.** PCM models; and
- v.** Any other voting system peripheral submitted for certification for use in the State of California.

3. Any written communications from independent testing authorities and the Elections Assistance Commission regarding when federal qualification and/or issuance of NASED numbers will occur.

m. Subject to reasonable confidentiality restrictions and licensing agreements agreed upon between DESI and the Secretary of State and subject to the provisions for production of documents set forth in subparagraph 6.2.d., DESI shall produce the following documents relating to each hardware, software and firmware version for any component of the voting system: detailed change logs, hardware change records or logs, test records (including QA documents) relating to the changed components, and documents describing the effects of the changes. This subparagraph 6.3.m. shall only apply in the event DESI applies for recertification or revision of a voting system that was previously certified by the Secretary of State, and the Secretary of State deems that a full review of the voting system is not required.

n. Subject to reasonable confidentiality restrictions, as agreed upon between DESI and the Secretary of State and within 30 days after entry of this Judgment, DESI shall execute and deliver to the Secretary of State at the Office of the Secretary of State located at 1500 11th Street, Sacramento, California an authorization in a format reasonably acceptable to DESI and the Independent Testing Authorities, to enable the Secretary of State to obtain information about the status of federal testing and qualification of DESI voting systems proposed to be used in the State of California.

o. With respect to DESI voting systems undergoing certification testing for use in California, DESI shall, within three business days, advise the Secretary of State of problems encountered in California or in other jurisdictions, whether upon completion of testing or in an

1 actual election, which DESI concludes would reasonably create an impediment to obtaining
2 certification. Within a reasonable time after notifying the Secretary of State pursuant to this
3 subparagraph, and subject to reasonable confidentiality restrictions and licensing agreements
4 agreed upon between DESI and the Secretary of State, DESI shall notify the Secretary of State,
5 in writing, such notification to include: (1) a description of the problem; (2) where it occurred;
6 (3) what steps have been taken to address the problem; (4) System Change Notes as defined in
7 VSS-2002, Vol II, Section 2.11.5, Release Process; and (5) the documents required by
8 VSS-2002, Vol II, Section 2.13, System Change Notes for each release.

9 **p.** For purposes of analysis and testing, staff reference and public education,
10 upon demand by the Secretary of State and subject to reasonable confidentiality restrictions and
11 licensing agreements agreed upon between DESI and the Secretary of State, and provided the
12 Secretary of State provides adequate assurances regarding security measures designed to secure
13 the voting system, DESI shall bear the cost of and provide to the Secretary of State at the Office
14 of the Secretary of State located at 1500 11th Street, Sacramento, California, or to his designee,
15 within 60 days after demand, and shall maintain in good working order provided the following
16 are subjected only to normal wear and tear and proper usage: one working version of the
17 AccuVote-OS, AccuVote-TS, AccuVote-TSx voting units, a server containing GEMS vote-
18 tabulation system and peripherals proposed to be used in any California election.

19 **q.** On demand by the Secretary of State and with reasonable notice to DESI,
20 DESI shall meet with the Secretary of State or designee to discuss and obtain feedback regarding
21 the status of DESI voting systems in the process of development for use in California, including
22 the status of voting systems submitted for federal qualification testing to Independent Testing
23 Authorities. The number of meetings DESI is required to attend pursuant to this subparagraph
24 shall be reasonable in light of the circumstances existing at the time demand is made.

25 **r.** If any California county that proposes to use DESI voting systems in an
26 election applies for funding under the Voting Modernization Bond Act, DESI shall, upon request
27 by the Voting Modernization Bond Act Board or the Secretary of State, provide a statement
28

1 under penalty of perjury identifying the voting system supplied and affirming that each voting
2 system is state certified at the time of DESI's statement.

3 s. DESI shall not cause any county customer or county employee to use or
4 assist any county customer or county employee in using any voting system that receives or
5 transmits official election results through any network that is not both logically and physically
6 isolated and protected. This provision is not intended to prohibit the counties' transmission of
7 unofficial election results, including election night results, using a public telephone system.

8 t. DESI shall not transmit, cause any county customer or county employee to
9 transmit or assist any county customer or county employee in transmitting official election
10 results by wireless electronic communication.

11 u. DESI shall not connect, cause any county customer or county employee to
12 connect, or assist any county customer or county employee in connecting, any voting systems to
13 any network that is not both logically and physically isolated and protected. This provision is
14 not intended to prohibit the counties' transmission of unofficial election results, including
15 election night results, using a public telephone system.

16 v. DESI shall not install, cause any county customer or county employee to
17 install or assist any county customer or county employee in downloading or installing software
18 or firmware to voting systems used in the State of California through use of the Internet. This
19 provision is not intended to prohibit DESI personnel from downloading or installing software or
20 firmware using DESI's Secure Virtual Private Network (VPN), provided there is no direct
21 connection between the VPN and the voting system.

22 w. No later than 30 days after entry of Judgment, DESI shall bear the cost of
23 and implement in touchscreen voting systems to be used in California elections, the following
24 security measures:

- 25 1. Replace hard-coded supervisor passwords with dynamic passwords, and
26 provide directions and training to enable election officials to change
27 these passwords if election officials choose to do so.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 2. Use Secure Sockets Layer (SSL) to encipher all data transmissions between touchscreen terminals and the GEMS server. This shall include all transmissions between the terminals and the server, as well as all uploads and downloads taking place within, to, or from election central.
- 3. Replace hard-coded Data Encryption Standard (DES) security key with encryption keys programmable by County.

///

x. DESI shall configure and bear the cost of configuring all GEMS servers to be used in California elections with the following characteristics: (1) all network services and network ports are to be turned off, except those explicitly required to run the GEMS software; (2) the autorun feature in Windows is to be disabled; (3) the boot order is to boot from the hard drive first; and (4) the BIOS is to be password protected to prevent changes to the boot order. DESI shall only be obligated to comply with this subparagraph 6.3.x. if the counties request such configuration and ship the servers to DESI at a facility specified by DESI, and if the Secretary of State approves the configuration(s). Nothing in this subparagraph 6.3.x. shall require DESI to seek approval from the Secretary of State for the GEMS configuration(s) described in this subparagraph.

y. In the event a county does not request the GEMS reconfiguration described in subparagraph 6.3.x., DESI shall, upon request of the county, bear the cost of and provide written instructions and recommendations in order to enable the county to configure GEMS servers to be used in California elections with the following characteristics: (1) all network services and network ports are to be turned off, except those explicitly required to run the GEMS software; (2) the autorun feature in Windows is to be disabled; (3) the boot order is to boot from the hard drive first; and (4) the BIOS is to be password protected to prevent changes to the boot order.

1 **z.** Notify the Secretary of State and the counties in which GEMS servers are to
2 be used in California elections of any Microsoft security patches that DESI recommends be
3 installed on GEMS servers.

4 **aa.** With respect to DESI touchscreen firmware 4.5.1. or other version with
5 similar features to be used in California elections, DESI shall implement and bear the cost of the
6 following security measures:

7 **1.** Using Secure Sockets Layer (SSL), authenticate all data transmissions,
8 including all modem transmissions between touchscreen terminals and
9 the GEMS server for destination and source.

10 ///

11 **2.** Insert digital signatures in the ballot definition files on the PCMCIA
12 card.

13 **bb.** Nothing in this subparagraphs 6.3.w., 6.3.x., 6.3.y., and 6.3.aa. shall relieve
14 DESI from contractual obligations to provide additional or different services or equipment to
15 California counties.

16 **cc.** No later than six months after entry of Judgment, DESI shall implement a
17 compliance program which shall include provisions designed to ensure that DESI's new or
18 modified voting systems are federally qualified and state certified prior to their use in California
19 elections and to ensure DESI's compliance with laws and regulations.

20 **dd.** No later than 60 days after entry of Judgment, DESI shall hire a compliance
21 officer and maintain the position of a compliance officer charged with overseeing the compliance
22 program once implemented.

23 **ee.** No later than 60 days after entry of Judgment, DESI shall certify to the
24 ATTORNEY GENERAL and the ALAMEDA COUNTY DISTRICT ATTORNEY that it has
25 complied with the terms of subparagraphs 6.3.a., 6.3.b., 6.3.c., 6.3.d., and 6.3.e.

26 **ff.** No later than 90 days after entry of Judgment, DESI shall certify to the
27 ATTORNEY GENERAL and the ALAMEDA COUNTY DISTRICT ATTORNEY that it has
28 complied with the terms of subparagraph 6.3.dd.

1 **gg.** No later than July 1, 2005, DESI shall certify to the ATTORNEY
2 GENERAL and the ALAMEDA COUNTY DISTRICT ATTORNEY that it has complied with
3 the terms of subparagraph 6.3.cc.

4 **6.4** DESI shall retain through and including December 31, 2006, documents and
5 records necessary to comply with and show compliance with the injunctive provisions of this
6 Judgment.

7 **6.5** Nothing in this Injunction is intended to supersede existing law or regulations. In
8 the event of a conflict between provisions of this Injunction and the law or regulations of the
9 State of California, California law and/or regulations will apply.

10 ///

11 **6.6** Except as provided in Paragraph 6.4, this Injunction shall remain in effect through
12 and including the canvass period following the November 2006 General Election.

13 **6.7** In the event that the ATTORNEY GENERAL believes that DESI has violated
14 any provision of this Judgment, the ATTORNEY GENERAL shall notify DESI in writing of
15 such belief. DESI shall have the right to meet and confer with the ATTORNEY GENERAL'S
16 OFFICE within three business days of receipt of such notice to try to resolve any dispute before
17 the ATTORNEY GENERAL applies to the court for an order to enforce such provision or
18 provisions.

19 **6.8** In the event that ALAMEDA COUNTY believes that DESI has violated any
20 provision of this Judgment, ALAMEDA COUNTY shall notify DESI in writing of such belief.
21 DESI shall have the right to meet and confer with ALAMEDA COUNTY within three business
22 days of receipt of such notice to try to resolve any dispute before ALAMEDA COUNTY applies
23 to the court for an order to enforce such provision or provisions.

24 **7. REGULATORY CHANGES.**

25 Nothing in this Judgment shall excuse DIEBOLD or DESI from meeting any different or
26 more stringent requirements that may be imposed hereafter by changes in applicable law or
27 regulations.

28 **8. APPLICATION OF JUDGMENT.**

1 The injunctive provisions of the Judgment shall be applicable to DESI, any successor
2 corporations, and their officers, directors, managers and employees. DESI shall take all
3 reasonably necessary steps to obtain compliance with the injunctive provisions of the Judgment
4 by any agents and independent contractors. In the event DESI ceases to operate and another
5 entity under the control of DIEBOLD is formed that sells, manufactures or services voting
6 systems or voting system components in the State of California, DIEBOLD shall be bound by
7 the injunctive provisions of the Judgment. DESI and DIEBOLD shall give notice to the
8 ATTORNEY GENERAL and the ALAMEDA COUNTY DISTRICT ATTORNEY of the
9 formation of any successor corporation, subsidiary, or business entity in which they have any
10 ownership or over which they have control, which does business in or from California and
11 relates to the sale, manufacture or servicing of voting systems and components.

12 **9. NO WAIVER OF RIGHT TO ENFORCE.**

13 The failure of any of the Settling Plaintiffs to enforce any provision of this Judgment shall
14 in no way be deemed a waiver of such provision, or in any way affect the validity of this
15 Judgment. The failure of any of the Settling Plaintiffs to enforce any such provision shall not
16 preclude it from later enforcing the same or any other provision of this Judgment. No oral
17 advice, guidance, suggestions or comments by employees or officials of any party regarding
18 matters covered in this Judgment shall be construed to relieve any party of its obligations
19 required by this Judgment.

20 **10. PAYMENT OF LITIGATION EXPENSES AND FEES.**

21 DIEBOLD and DESI shall pay their own attorney's fees, expert witness fees and costs, and
22 all other costs of litigation incurred to date.

23 **11. MATTERS COVERED BY THIS JUDGMENT.**

24 This Judgment is a final and binding resolution and settlement of only all claims, violations
25 or causes of action alleged in and encompassed by the First Amended Complaint against
26 DIEBOLD, DESI, and their shareholders, officers and employees, to the date of Judgment. This
27 Judgment is not intended to eliminate or modify the ongoing obligations, duties and
28 responsibilities set forth in the Agreement between ALAMEDA COUNTY, DESI and

1 DIEBOLD (Contract No. 003-1-7459). The provisions of this Paragraph 11 are expressly
2 conditioned on DESI's full payment of amounts due under this Judgment by the deadlines
3 specified in the Judgment and full satisfaction of any payment obligations pursuant to Paragraph
4 5.

5 **12. EFFECT OF JUDGMENT.**

6 In accordance with Code of Civil Procedure section 526 subdivision (b)(4), nothing in this
7 Judgment prevents the execution of a public statute by officers of the law for the public benefit.

8 **13. RETENTION OF JURISDICTION.**

9 The court shall retain jurisdiction as the ends of justice may require for the purpose of
10 enabling any party to this Judgment to apply to the court at any time for such further orders and
11 directions as may be necessary or appropriate (a) for the construction or carrying out of the
12 Judgment; (b) for Settling Plaintiffs to apply at any time for enforcement of any provision of the
13 Judgment; (c) for modification of the injunctive provisions of the Judgment; and (d) for
14 punishment of any violations of the Judgment. However, no modification may be brought with
15 respect to any payments to be made by DESI pursuant to Paragraph 4 of this Judgment.

16 **14. MODIFICATION OF JUDGMENT.**

17 This Judgment can be modified only by order of the court.

18 **15. INTERPRETATION.**

19 The Stipulation and Judgment shall be deemed to have been drafted equally by the Parties.
20 Any and all rules of construction to the effect that ambiguity is construed against the drafting
21 party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of the
22 Stipulation or Judgment.

23 **16. EFFECTIVE DATE.**

24 The Judgment shall take effect immediately upon entry.

25 **17. NOTICE OF ENTRY OF JUDGMENT.**

26 Notice of entry of judgment on DIEBOLD and DESI shall be deemed to have been served
27 on DIEBOLD and DESI by delivery of the Judgment to DIEBOLD'S and DESI'S counsel of
28

1 record. Such service will be deemed personal service upon them for all purposes, including
2 contempt.

3 **18. DISMISSAL.**

4 The original *qui tam* complaint filed by MARCH and HARRIS on November 21, 2003 is
5 ordered dismissed with prejudice. All DOE defendants named in the First Amended Complaint
6 are dismissed with prejudice.

7 **19. ENTRY OF JUDGMENT.**

8 The clerk shall enter this Judgment forthwith.

9

10 DATED: _____, 2004

JUDGE OF THE SUPERIOR COURT

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **APPROVED AS TO FORM:**

2 **JONES DAY**

3

4 BY: _____
5 JOHN M. MAJORAS
6 Attorney for DIEBOLD ELECTION
7 SYSTEMS, INC. and DIEBOLD, INCORPORATED

8 **BRYAN CAVE LLP**

9

10 BY: _____
11 JEFFREY MODISETT
12 Attorney for DIEBOLD ELECTION
13 SYSTEMS, INC. and DIEBOLD, INCORPORATED

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28