

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

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December 6, 2011

## Via Electronic Mail

Chris Skinnell, Esq.  
Nielsen Merksamer Law Firm  
2350 Kerner Blvd., Ste. 250  
San Rafael, CA 94901

Re: *Field v. Bowen* (San Francisco Superior Court No. CGC 10502018)

Dear Mr. Skinnell:

As you know, our office represents Plaintiffs. In your email from Friday, you inquired how our clients intended to proceed in light of the Court's Friday ruling regarding Linda Hall's Motion to Intervene.

We had intended to respond to your inquiry this morning, after consulting with our clients. In light of the Court's ruling, Plaintiffs intend to file a Motion to Amend their pleadings. However, instead of waiting for our timely response to your inquiry, yesterday your clients filed a Motion for Judgment on the Pleadings (the "MJP").

At the outset, your clients' MJP is defective, for it does not comply with Section 438 of the Code of Civil Procedure. Instead of confining itself to the four corners of the pleadings, the MJP is replete with improper citations and references to extrinsic evidence. In other words, the MJP is nothing but a disguised Motion for Summary Judgment – which, unlike a Motion for Judgment on the Pleadings, should have been noticed *at least 75 days* before the date of the hearing.<sup>1</sup> Consequently, we ask that your clients immediately withdraw their defective MJP.

In any event, *any* motion from your clients may soon become moot, for Plaintiffs intend to promptly ask the Court for leave to amend their First Amended Complaint.

To date, Plaintiffs have not asked the Court for leave to amend any of their pleadings. Plaintiffs will now seek the Court's permission to add Ms. Hall's causes of action to their pleadings – enabling the Court to resolve whether Senate Bill 6's Vote Counting Ban, as it has been *applied* by the Secretary of State, is unconstitutional.

In order to conserve judicial resources, we make two requests. First, we ask that you withdraw your clients' MJP no later than the close of business tomorrow. Second, we ask that your clients stipulate to amending the First Amended Complaint. In the spirit of the holidays, we would be amenable to extending the deadline for your clients (and all other parties) to respond to Plaintiffs' amended pleading.

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<sup>1</sup> CCP §437c(a).

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Please do not hesitate to call our office with any questions. We look forward to hearing from you.

Sincerely,

Gautam Dutta, Esq.

Cc: All counsel of record