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5 MICHAEL CHAMNESS, DANIEL FREDERICK,  
6 and RICH WILSON

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

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11 MICHAEL CHAMNESS, DANIEL  
FREDERICK, and RICH WILSON,

CASE NO. 2:11-CV-01479 ODW  
(FFMx)

12 *Plaintiffs,*

13  
14 vs.

**PLAINTIFFS' STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

15 DEBRA BOWEN, in only her  
official capacity as California  
Secretary of State; DEAN LOGAN,  
16 in only his official capacity as  
Registrar-Recorder / County Clerk of  
17 the County of Los Angeles; and  
DOES 1-10;

HEARING DATE: June 6, 2011  
HEARING TIME: 1:30 pm  
JUDGE: Hon. Otis D. Wright

18 *Defendants.*

19 COURTROOM: 11\_

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<b>UNDISPUTED FACT</b>	<b>SUPPORTING EVIDENCE &amp; PARTIES' RESPONSE</b>
<p>1. Plaintiff Chamness is registered to vote in Congressional District 36 and Senate District 28 with the party affiliation of the Coffee Party.</p>	<p>May 6, 2011 Declaration of Michael Chamness (“Chamness Decl.”) ¶¶1, 3 &amp; Exh. 1 (voter registration form).</p> <p>ADMITTED by Secretary Bowen, as rephrased in her Response; Intervenors allege that they need to conduct discovery regarding this fact.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Intervenors have failed to conduct timely discovery. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>Mackey v. Pioneer Nat’l Bank</i>, 867 F.2d 520, 524 (9<sup>th</sup> Cir. 1989) (litigant who has failed to conduct timely discovery barred from staying hearing on motion for summary judgment); <i>Brae Transp. v. Coopers &amp; Lybrand</i>, 790 F.2d 1439, 1443 (9<sup>th</sup> Cir. 1986) (same); <i>Frederick S. Wyle P. C. v. Texaco</i>, 764 F.2d 604, 612 (9<sup>th</sup> Cir. 1985) (same); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>2. Plaintiff Chamness has qualified for and appeared on the ballots of the Feb. 15, 2011 special primary election for Senate District 28 (the “SD 28 Primary”) and the May 17, 2011 special primary election for Congressional District 36 (the “CD 36 Primary”).</p>	<p>May 6, 2011 Declaration of Gautam Dutta (“Dutta Decl.”), Exh. E (p. 15, CD 36 Primary sample ballot), Exh. G (p. 67, SD 28 Primary ballot), Exh. H (p. 71, List of CD 36 Primary certified candidates) and I (p. 75, list of SD 28 Runoff certified candidates).</p> <p>ADMITTED by Secretary Bowen and Intervenors.</p>

<p>1 2 3 4 5 6</p>	<p>3. In both the CD 36 and SD 28 Primaries, Plaintiff Chamness was barred from using the ballot label of “Independent”, and instead forced to use the ballot label of “No Party Preference”.</p>	<p>Dutta Decl., Exh. E (p. 15, CD 36 Primary sample ballot), Exh. G (p. 67, SD 28 Primary ballot), Exh. H (p. 71, List of CD 36 Primary certified candidates) and I (p. 75, List of SD 28 Runoff certified candidates).</p> <p>ADMITTED by Secretary Bowen; ADMITTED as rephrased by Intervenors.</p>
<p>7 8 9</p>	<p>4. Plaintiff Frederick is registered to vote in Assembly District 4.</p>	<p>May 6, 2011 Declaration of Daniel Frederick (“Frederick Decl.”) ¶1 &amp; Exh. 1 (voter registration card).</p> <p>ADMITTED by Secretary Bowen and Intervenors.</p>
<p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>5. Plaintiff Frederick sought to run as a write-in candidate in the AD 4 Runoff over two months before the May 3, 2011 special general election in Assembly District 4 (the “AD Runoff”) was held, but was barred from doing so.</p>	<p>Frederick Decl. ¶¶8-11, 14-15; Dutta Decl. Exh. W (p. 107, Plaintiffs’ counsel’s letter to Secretary Bowen), Exh. X (p. 109, Secretary Bowen’s Chief Counsel’s response to Plaintiffs’ counsel).</p> <p>ADMITTED as rephrased by Secretary Bowen.</p> <p>Intervenors dispute and allege that they need to conduct discovery regarding this fact.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Intervenors have failed to conduct timely discovery. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>Mackey v. Pioneer Nat’l Bank</i>, 867 F.2d 520, 524 (9<sup>th</sup> Cir. 1989) (litigant who has failed to conduct timely discovery barred from staying hearing on motion for summary judgment); <i>Brae Transp. v. Coopers &amp; Lybrand</i>, 790 F.2d 1439, 1443 (9<sup>th</sup> Cir. 1986) (same); <i>Frederick S. Wyle P.C. v. Texaco</i>, 764 F.2d 604, 612 (9<sup>th</sup> Cir. 1985) (same); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion</p>

1		for Summary Judgment, at 6:7-8:1.
2	6. Plaintiff Wilson is registered to vote in Assembly District 4.	May 6, 2011 Declaration of Rich Wilson (“Wilson Decl.”) ¶1.  ADMITTED by Secretary Bowen and Intervenors.
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4	7. Plaintiff Wilson cast a write-in vote for Plaintiff Frederick in the AD 4 Runoff.	Wilson Decl. ¶¶4, 5; Exh. 1 (copy of write-in ballot) & Exh. 2 (copy of envelope in which ballot was mailed, with the “May 3, 2011” date of the AD 4 Runoff pre-printed on the front).  ADMITTED by Secretary Bowen and Intervenors.
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9	8. On May 3, 2011, Plaintiff Wilson’s vote for Plaintiff Frederick was not counted.	Wilson Decl. ¶¶6, 7 & Exh. 3 (Secretary Bowen’s Memorandum on SB 6’s Vote Counting Ban); Dutta Decl. ¶¶2-4; SB 6-amended Elections Code §8606 (SB 6’s Vote Counting Ban).  ADMITTED by Secretary Bowen.  Intervenors allege that Paragraphs 2-4 of the Dutta Declaration are inadmissible hearsay and that the other evidence is not relevant.  <u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the Dutta Declaration is admissible in its entirety. <i>See Albarran v. New Form, Inc. (In re Barboza)</i> , 545 F.3d 702, 707 (9 <sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1; Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶8.
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25	9. SB 6 was passed in the middle of the night on Feb. 19, 2009, without any public debate or discussion.	Dutta Decl. Exh. C (p. 13, legislative history shows that no public hearings were held for SB 6) & J (at p. 76, Proposition 14 / SB 6 “open primary” bills passed between 3:40 am and 6:55 am on Feb. 19, 2009).
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	<p>Disputed by Secretary Bowen and Intervenors.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Exhibit J is admissible. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1; Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶9, 18, 19, 21.</p>
<p>10. Last summer, Secretary Bowen’s staff publicly stated that SB 6’s Vote Counting Ban (a) gave candidates the “illusion” that they could “run as a write-in”, and (b) gave voters the “illusion” that their votes would be counted if they voted for a write-in candidate.</p>	<p>Dutta Decl. Exh. 4 (p. 26, Office of Secretary Bowen’s email to the Office of the Lieutenant Governor).</p> <p>Disputed by Secretary Bowen and Intervenors, on grounds that Exhibit C is inadmissible.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Exhibit C is admissible. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1; Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶10, 11.</p>
<p>11. Last summer, Secretary Bowen’s staff publicly stated that it is not “permissible” to force candidates to state on the ballot that they have “No</p>	<p>Dutta Decl. Exh. 4 (p. 21, Office of Secretary Bowen’s email to the Office of the Lieutenant Governor).</p> <p>Disputed by Secretary Bowen and Intervenors, on grounds that Exhibit C is inadmissible.</p>

<p>1 2 3 4 5 6 7 8 9</p>	<p>Party Preference”.</p>	<p>Plaintiffs’ Response: No specific evidence has been produced that controverts this fact, and Exhibit C is admissible. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1; Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶10, 11.</p>
<p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>12. Proposition 14 did not confer any new rights on politically independent voters. Before SB 6 took effect, unaffiliated voters had been allowed to vote in Democratic and Republican primaries for the past decade. Neither SB 6 nor Proposition 14 gave unaffiliated voters the right to vote in the Democratic or Republican Presidential Primaries.</p>	<p>Between 2001 and 2010, unaffiliated (“decline to state”) voters were allowed to vote in every Democratic or Republican primary for state and federal (non-Presidential) office. Elections Code §13102(b), <i>codified at Ch. 98, Stats. 2000</i> (giving qualified parties the option of allowing “decline to state” voters to vote in their primaries).</p> <p>Disputed by Secretary Bowen (<i>citing generally</i> Elections Code §§8300 <i>et seq.</i>); Interveners allege that insufficient evidence supports this fact.</p> <p>Plaintiffs’ Response: No specific evidence or statute has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>25 26 27 28</p>	<p>13. It would have cost between \$27,200 and \$108,800 for Plaintiff Chamness to publish candidate statements in the</p>	<p>It would have cost Plaintiff Chamness between \$15,600 to \$62,400 to publish a candidate statement in the SD 28 Primary. Dutta Decl. Exh. L (p. 79, candidate handbook for SD 28 Primary). It would have cost</p>

<p>1 voter guides for 2 both the CD 36 3 Primary and the SD 4 28 Primary.</p>	<p>\$11,600 to \$46,400 to do so in the CD 36 Primary. Dutta Decl. Exh. K (p. 78. candidate handbook for CD 36 Primary).</p> <p>ADMITTED as rephrased by Secretary Bowen.</p> <p>Disputed by Intervenors (claiming that Plaintiff Chamness could have qualified for a fee waiver if he had been indigent).</p> <p><u>Plaintiffs' Response:</u> No specific evidence or statute has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce "specific evidence" that controverts a fact); Plaintiffs' May 12, 2011 Opposition to Secretary Bowen's Ex Parte Application to Defer Consideration of Plaintiffs' Motion for Summary Judgment, at 6:7-8:1; <i>Bullock v. Carter</i>, 405 U.S. 134, 146 (1972) ("We can hardly accept as reasonable an alternative that requires candidates and voters to <i>abandon their party affiliations in order to avoid the burden of the filing fees.</i>") (emphases added).</p>
<p>14. On Nov. 2, 2010, Cecilia Iglesias ran as an Independent candidate in the 47<sup>th</sup> Congressional District.</p>	<p>Dutta Decl., Exh. M (p. 80, official sample ballot for Nov. 2, 2010 statewide general election).</p> <p>ADMITTED by Intervenors.</p> <p>Objected to as irrelevant by Secretary Bowen.</p> <p><u>Plaintiffs' Response:</u> No specific evidence has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce "specific evidence" that controverts a fact); Plaintiffs' May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶14; Plaintiffs' May 12, 2011 Opposition to Secretary Bowen's Ex Parte</p>

1 2		Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	15. Between 1891 and 1915, California law permitted minor-party candidates to state their party’s name on the ballot. In 1912, a minor-party candidate (William Kent of the Progressive Party) was elected by California’s 1 <sup>st</sup> Congressional District.	Former Political Code §1188, <i>codified at</i> Ch. 130 Stats 1891 (allowing minor-party candidates to state their party’s name on the ballot), <i>amended by</i> Ch. 136 Stats. 1915, p.274 (allowing minor-party candidates to use the ballot label of “Independent”, but not allowing them to state their party’s name on the ballot). Dutta Decl., Exh. O (p. 82, <i>Ballot Access News</i> , June 1, 2001).  Disputed by Secretary Bowen and Intervenors, on grounds that Exhibit O of the Dutta Declaration (article from <i>Ballot Access News</i> ) is not admissible.  <u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the <i>Ballot Access News</i> article is admissible. <i>See Albarran v. New Form, Inc. (In re Barboza)</i> , 545 F.3d 702, 707 (9 <sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶15; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.
21 22 23 24 25 26 27 28	16. Within the last two decades, Quentin Kopp and Lucy Killea were both elected the State Senate as Independent candidates.	Dutta Decl. Exh. N (at p. 81, Wikipedia records showing that Independent candidate Lucy Killea won her State Senate race in 1992); Exh. P (at p. 87, showing that independent candidate Quentin Kopp won State Senate races in 1986, 1990, and 1994).  Disputed by Secretary Bowen and Intervenors, on the ground that Wikipedia articles are inadmissible.  <u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the Ninth

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	<p>Circuit takes judicial notice of Wikipedia articles. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶16; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>17. Currently, over one-fifth of California’s voters are not registered with a major political party.</p>	<p>According to Secretary Bowen’s website, 20.4 percent of registered voters did not belong to a qualified (major) party as of Feb. 20, 2011. Dutta Decl., Exh. R (at p. 97, Secretary Bowen’s Historical Voter Registration Statistics).</p> <p>ADMITTED by Secretary Bowen and Intervenors.</p>
<p>18. Two years ago, then-State Senator Abel Maldonado cast the deciding vote to pass the state budget by a two-thirds majority.</p>	<p>“The Senate had been one GOP vote short until Sen. Abel Maldonado ... changed his mind to support the budget plan, but only after Schwarzenegger and legislative leaders agreed to his demands.” Dutta Decl., Exh. J (at p. 76); Dutta Decl. Exh. C (p. 13, legislative history showing that Maldonado authored SB 6); Dutta Decl., Exh. D (p. 14, legislative history showing that Maldonado authored Senate Constitutional Amendment 4 / Proposition 14).</p> <p>ADMITTED by Intervenor Maldonado; disputed by Secretary Bowen on ground that the <i>San Francisco Chronicle</i> news article is unreliable.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the Court may take notice of news articles. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts</p>

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	<p>a fact); <i>League of United Latin American Citizens v. Wilson</i>, 131 F.3d 1297, 1305 (9<sup>th</sup> Cir. 1997) (quoting news articles concerning legal challenge filed to block the implementation of a state law); <i>Heliotrope Gen., Inc. v. Ford Motor Co.</i>, 189 F.3d 971, 981 (9<sup>th</sup> Cir. 1999) (taking judicial notice of information contained in news articles); <i>Ieradi v. Mylan Laboratories, Inc.</i>, 230 F.3d 594, 597-98 (3<sup>rd</sup> Cir. 2000) (same); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶9, 18, 19, 21; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>19. In exchange for his vote on the budget, Maldonado demanded legislation that eliminated the qualified-party election system.</p>	<p>Dutta Decl., Exh. J (at p. 76, in exchange for his vote on the budget, Sen. Maldonado successfully demanded that the Legislature pass his “open primary” SB 6 and Senate Constitutional Amendment / Proposition 14 bills).</p> <p>Disputed by Secretary Bowen and Intervenors on ground that the <i>San Francisco Chronicle</i> news article is unreliable.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the Court may take notice of news articles. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>League of United Latin American Citizens v. Wilson</i>, 131 F.3d 1297, 1305 (9<sup>th</sup> Cir. 1997) (quoting news articles concerning legal challenge filed to block the implementation of a state law); <i>Heliotrope Gen., Inc. v. Ford Motor Co.</i>, 189 F.3d 971, 981 (9<sup>th</sup> Cir. 1999) (taking judicial notice of information contained in news articles); <i>Ieradi v. Mylan Laboratories, Inc.</i>, 230 F.3d 594,</p>

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	<p>597-98 (3<sup>rd</sup> Cir. 2000) (same); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶9, 18, 19, 21; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>20. The Legislature obliged by (1) putting Maldonado-authored Proposition 14 on the June 8, 2010 ballot, and (2) passing Maldonado-authored SB 6, which implemented the provisions of Proposition 14.</p>	<p>Dutta Decl. Exh. C (p. 13, bill history showing that Maldonado authored SB 6); Dutta Decl., Exh. D (p. 14, bill history showing that Maldonado authored Senate Constitutional Amendment 4 / Proposition 14); Exh. Q (p. 90-91, June 8, 2010 official voter information guide).</p> <p>ADMITTED as rephrased by Intervenor Maldonado; disputed by Secretary Bowen (without providing any basis for dispute).</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>21. Between 3:40 am and 6:55 am on February 19, 2009, the Legislature passed SB 6 and voted to put Proposition 14 on the June 8, 2010 ballot, without holding a single hearing or giving the public any notice.</p>	<p>Dutta Decl., Exh. J (at p. 76, showing that the Legislature passed Maldonado’s “open primary” SB 6 / Proposition 14 bills between 3:40 am and 6:55 am); Dutta Decl. Exh. C [p. 13-14, legislative history showing that no committee hearings were held for either SB 6 or Senate Constitution Amendment 4 / Proposition 14); Dutta Decl., Exh. D (p. 14, legislative history showing that Maldonado authored Senate Constitutional Amendment 4 / Proposition 14); Exh. Q (p. 90-91, June 8, 2010 official voter information guide for Proposition 14).</p>

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	<p>Disputed by Secretary Bowen and Intervenors, on ground that the <i>San Francisco Chronicle</i> news article (Exh. J of the Dutta Declaration) is unreliable.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the Court may take notice of news articles. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>League of United Latin American Citizens v. Wilson</i>, 131 F.3d 1297, 1305 (9<sup>th</sup> Cir. 1997) (quoting news articles concerning legal challenge filed to block the implementation of a state law); <i>Heliotrope Gen., Inc. v. Ford Motor Co.</i>, 189 F.3d 971, 981 (9<sup>th</sup> Cir. 1999) (taking judicial notice of information contained in news articles); <i>Ieradi v. Mylan Laboratories, Inc.</i>, 230 F.3d 594, 597-98 (3<sup>rd</sup> Cir. 2000) (same); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶¶9, 18, 19, 21; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>22. Subsequently, Secretary Bowen’s Voter Information Guide for Proposition 14 did not provide either a summary or the text of SB 6, which fleshes out critical details of Proposition 14.</p>	<p>Dutta Decl., Exh. Q (p. 90-96, June 8, 2010 official voter information guide for Proposition 14).</p> <p>ADMITTED as rephrased by Secretary Bowen and Intervenors.</p>
<p>23. On June 8, 2010, a narrow majority of voters approved Proposition 14.</p>	<p>Dutta Decl., Exh. S (p. 99, Secretary Bowen’s Statement of Vote showing that 53.8 percent of voters voted in favor of Proposition 14).</p> <p>ADMITTED as rephrased by Secretary Bowen and Intervenors.</p>

<p>1 24. The California 2 Association of 3 Clerks and Election 4 Officials has stated 5 that SB 6 mandates 6 a “complex set of 7 changes [that] <i>has</i> 8 <i>not occurred in</i> 9 <i>recent memory</i>[.]”</p>	<p>Dutta Decl., Exh. T (p. 104, Mar. 2, 2010 letter from California Association of Clerks and Election Officials to State Assembly Elections Committee).</p> <p>ADMITTED by Secretary Bowen; disputed by Intervenors, on ground that the public record at issue is inadmissible.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the public record at issue is admissible. <i>See</i> <i>Albarran v. New Form, Inc. (In re</i> <i>Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶24; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>15 25. The California 16 Association of 17 Clerks and Election 18 Officials has stated 19 that SB 6 will not 20 only force counties 21 to spend “<i>millions</i> 22 <i>of dollars</i> statewide 23 in ballot production 24 and postage costs”, 25 but could force 26 them to spend 27 millions more in 28 new voting equipment.</p>	<p>Dutta Decl., Exh. T (p. 104, Mar. 2, 2010 letter from California Association of Clerks and Election Officials to State Assembly Elections Committee).</p> <p>ADMITTED by Secretary Bowen; disputed by Intervenors, on ground that the public record at issue is inadmissible.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the public record at issue is admissible. <i>See</i> <i>Albarran v. New Form, Inc. (In re</i> <i>Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶25; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion</p>

1		for Summary Judgment, at 6:7-8:1.
2	26. Last year, Defendant Logan stated that the changes required by SB 6 would have	Dutta Decl., Exh. T (p. 101, Mar. 10, 2010 Memorandum to Los Angeles County Board of Supervisors).
3	“overwhelmed the capacity of our ballot. If the proposed open primary process were in place back in 2006 our voting system would not have been able to accommodate all of the contests and measures on the ballot.”	ADMITTED by Secretary Bowen and Intervenors.
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11	27. On February 27, 2010, Plaintiffs Frederick and Wilson asked Secretary Bowen (1) whether Plaintiff Frederick would be allowed to run as a write-in candidate in the AD 4 Runoff, and (2) whether Plaintiff Wilson’s vote would be counted, if he voted for Plaintiff Frederick in the AD 4 Runoff.	Dutta Decl., Exh. W (p. 107, Feb. 27, 2011 letter from Plaintiffs’ counsel to Secretary Bowen).
12		ADMITTED by Secretary Bowen; Intervenors allege that they need to conduct discovery regarding this fact.
13		Plaintiffs’ Response: No specific evidence has been produced that controverts this fact, and Intervenors have failed to conduct timely discovery. <i>See Albarran v. New Form, Inc. (In re Barboza)</i> , 545 F.3d 702, 707 (9 <sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>Mackey v. Pioneer Nat’l Bank</i> , 867 F.2d 520, 524 (9 <sup>th</sup> Cir. 1989) (litigant who has failed to conduct timely discovery barred from staying hearing on motion for summary judgment); <i>Brae Transp. v. Coopers &amp; Lybrand</i> , 790 F.2d 1439, 1443 (9 <sup>th</sup> Cir. 1986) (same); <i>Frederick S. Wyle P.C. v. Texaco</i> , 764 F.2d 604, 612 (9 <sup>th</sup> Cir. 1985) (same); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.
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28	28. On March 2,	Dutta Decl., Exh. X (p. 109, Mar.

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<p>2011, Secretary Bowen’s Chief Counsel responded that (a) SB 6 banned Plaintiff Frederick from running as a write-in candidate in the AD 4 Runoff, and (b) Secretary Bowen would enforce SB 6’s Vote Counting Ban.</p>	<p>2, 2011 letter from Secretary Bowen’s Chief Counsel to Plaintiffs’ counsel).</p> <p>ADMITTED by Secretary Bowen; Intervenors allege that they need to conduct discovery regarding this fact.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Intervenors have failed to conduct timely discovery. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>Mackey v. Pioneer Nat’l Bank</i>, 867 F.2d 520, 524 (9<sup>th</sup> Cir. 1989) (litigant who has failed to conduct timely discovery barred from staying hearing on motion for summary judgment); <i>Brae Transp. v. Coopers &amp; Lybrand</i>, 790 F.2d 1439, 1443 (9<sup>th</sup> Cir. 1986) (same); <i>Frederick S. Wyle P. C. v. Texaco</i>, 764 F.2d 604, 612 (9<sup>th</sup> Cir. 1985) (same); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>29. Relying on the response by Secretary Bowen’s Chief Counsel (i.e., that write-in candidacies were banned from the general election), Plaintiff Frederick did not file any papers to run as a write-in candidate for the AD 4 Runoff.</p>	<p>Frederick Decl. ¶14.</p> <p>ADMITTED by Secretary Bowen; Intervenors allege that they need to conduct discovery regarding this fact.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Intervenors have failed to conduct timely discovery. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>Mackey v. Pioneer Nat’l Bank</i>, 867 F.2d 520, 524 (9<sup>th</sup> Cir. 1989) (litigant who has failed to conduct timely discovery barred from staying hearing on</p>

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	<p>motion for summary judgment); <i>Brae Transp. v. Coopers &amp; Lybrand</i>, 790 F.2d 1439, 1443 (9<sup>th</sup> Cir. 1986) (same); <i>Frederick S. Wyle P.C. v. Texaco</i>, 764 F.2d 604, 612 (9<sup>th</sup> Cir. 1985) (same); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>30. Subsequently, Plaintiff Wilson cast a write-in vote for Plaintiff Frederick.</p>	<p>Wilson Decl. ¶¶4, 5; Exh. 1 (copy of write-in ballot) &amp; Exh. 2 (copy of envelope in which ballot was mailed, with the “May 3, 2011” date of the AD 4 Runoff pre-printed on the front).</p> <p>ADMITTED by Secretary Bowen and Intervenors.</p>
<p>31. On May 3, 2011, Plaintiff Wilson’s write-in vote was not counted in the AD 4 Runoff.</p>	<p>Wilson Decl. ¶¶6, 7 &amp; Exh. 3 (Secretary Bowen’s Memorandum on SB 6’s Vote Counting Ban); Dutta Decl. ¶¶2-4; SB 6-amended Elections Code §8606 (SB 6’s Vote Counting Ban).</p> <p>ADMITTED by Secretary Bowen; Intervenors allege that they need to conduct discovery regarding this fact.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and Intervenors have failed to conduct timely discovery. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>Mackey v. Pioneer Nat’l Bank</i>, 867 F.2d 520, 524 (9<sup>th</sup> Cir. 1989) (litigant who has failed to conduct timely discovery barred from staying hearing on motion for summary judgment); <i>Brae Transp. v. Coopers &amp; Lybrand</i>, 790 F.2d 1439, 1443 (9<sup>th</sup> Cir. 1986) (same); <i>Frederick S. Wyle P.C. v. Texaco</i>, 764 F.2d 604, 612 (9<sup>th</sup> Cir. 1985) (same); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer</p>

1		Consideration of Plaintiffs' Motion for Summary Judgment, at 6:7-8:1.
2	32. Last winter, Plaintiff Chamness	Chamness Decl. ¶9.
3	asked the California Supreme Court for	ADMITTED by Secretary Bowen and Intervenors.
4	permission to intervene in the	
5	state-court SB 6 litigation during a	
6	mandamus proceeding, in	
7	which the Secretary of State, Registrar	
8	Logan, and Intervenors were	
9	Real Parties in Interest.	
10	33. While Registrar Logan took no	Chamness Decl. ¶10.
11	position regarding Plaintiff Chamness'	ADMITTED by Intervenors;
12	request to intervene, the Secretary of	ADMITTED as rephrased by Secretary Bowen.
13	State and Intervenors	
14	vigorously opposed it.	
15	34. On December 15, 2010, the	Chamness Decl. ¶10; Dutta Decl.,
16	California Supreme Court denied both	Exh. U (p. 105, Dec. 15, 2010
17	Plaintiff Chamness' request to intervene	Supreme Court order denying all
18	and the underlying mandamus petition.	motions to intervene).
19		ADMITTED by Secretary Bowen and Intervenors.
20	35. Plaintiff Chamness first	Chamness Decl. ¶13.
21	sought to bring his as-applied	ADMITTED by Secretary Bowen and Intervenors.
22	challenge to the California Court of	
23	Appeal (First District). Toward	
24	this end, he asked the Court of Appeal	
25	for permission to intervene in the	
26	state-court SB 6 litigation.	
27	36. Registrar Logan took no position	Chamness Decl. ¶13.
28	with respect to	ADMITTED by Intervenors;

<p>1 2 3 4</p>	<p>Plaintiff Chamness' request to intervene in the Court of Appeal, while the Secretary of State and Intervenors vigorously opposed his request.</p>	<p>ADMITTED as rephrased by Secretary Bowen.</p>
<p>5 6 7 8 9 10 11 12 13 14 15 16</p>	<p>37. On January 31, 2011, the Court of Appeal denied Plaintiff Chamness' request to intervene. Had he been permitted to intervene, Plaintiff Chamness would not have brought his claims to this Court.</p>	<p>Chamness Decl. ¶14; Dutta Decl., Exh. V (p. 106, Jan. 31, 2011 Court of Appeal order denying Plaintiff Chamness' motion to intervene).</p> <p>ADMITTED by Intervenors; first sentence ADMITTED by Secretary Bowen; second sentence disputed by Secretary Bowen.</p> <p><u>Plaintiffs' Response:</u> No specific evidence has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce "specific evidence" that controverts a fact); Plaintiffs' May 12, 2011 Opposition to Secretary Bowen's Ex Parte Application to Defer Consideration of Plaintiffs' Motion for Summary Judgment, at 6:7-8:1.</p>
<p>17 18 19</p>	<p>38. Secretary Bowen also appeared on the ballot of the CD 36 Primary (with the ballot label of "Democratic").</p>	<p>Dutta Decl., Exh. E (p. 15, official sample ballot sent to overseas voters).</p> <p>ADMITTED by Intervenors; ADMITTED as rephrased by Secretary Bowen.</p>
<p>20 21 22 23 24 25 26 27 28</p>	<p>39. Secretary Bowen has published CD 36 and SD 28 Lists of Certified Candidates; both lists falsely stated that Plaintiff Chamness had "No Party Preference".</p>	<p>Dutta Decl., Exh. H (p. 68, 71) &amp; Exh. I (p. 73, 75).</p> <p>ADMITTED as rephrased by Secretary Bowen; disputed by Intervenors (citing Plaintiff Chamness' voter registration card, in which he states a preference for the Coffee Party).</p> <p><u>Plaintiffs' Response:</u> No specific evidence has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment</p>

1 2 3 4		must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	40. Tonia Reyes Uranga finished second in her 2010 race for Long Beach City Council; write-in candidate Ron Packard was elected to Congress in 1982.	<p><i>Ballot Access News</i>, June 1, 2001, Dutta Decl. Exh. O, p. 84 (Ron Packard won write-in bid for Congress in 1982); Dutta Decl., Exh. Y, at 111 (<i>Long Beach Post</i> article reporting that write-in candidate Reyes Uranga finished second in the Apr. 13, 2010 Long Beach City Council election).</p> <p>Disputed by Secretary Bowen and Intervenors, on grounds that Exhibit O of the Dutta Declaration (article from <i>Ballot Access News</i>) is not admissible.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact, and the <i>Long Beach Post</i> and <i>Ballot Access News</i> articles are both admissible. See <i>Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); <i>League of United Latin American Citizens v. Wilson</i>, 131 F.3d 1297, 1305 (9<sup>th</sup> Cir. 1997) (quoting news articles concerning legal challenge filed to block the implementation of a state law); <i>Heliotrope Gen., Inc. v. Ford Motor Co.</i>, 189 F.3d 971, 981 (9<sup>th</sup> Cir. 1999) (taking judicial notice of information contained in news articles); <i>Ieradi v. Mylan Laboratories, Inc.</i>, 230 F.3d 594, 597-98 (3<sup>rd</sup> Cir. 2000) (same); Plaintiffs’ May 27, 2011 Response to Objections to Their Request for Judicial Notice ¶40; Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
28	41. Secretary	Dutta Decl., Exh. B (p. 11 n.2,

<p>1 Bowen’s office 2 claims that SB 6 3 Section 8605 bans 4 all write-in 5 candidates from 6 running in the 7 general election.</p>	<p>Secretary Bowen’s Information Sheet on the AD 4 Runoff); Exh. X (p. 109, Secretary Bowen’s Chief Counsel letter); Frederick Decl. ¶¶10, 11.</p> <p>ADMITTED by Intervenors; ADMITTED by Secretary Bowen as rephrased.</p>
<p>6 42. Registrar Logan 7 published CD 36 8 and SD 28 Primary 9 ballots that falsely 10 stated that Plaintiff 11 Chamness had “No 12 Party Preference”.</p>	<p>Dutta Decl., Exh. E (p. 15, CD 36 Primary sample ballot), Exh. G (p. 67, SD 28 Primary ballot).</p> <p>ADMITTED as rephrased by Secretary Bowen; disputed by Intervenors (citing Plaintiff Chamness’ voter registration card, in which he states a preference for the Coffee Party).</p> <p><u>Plaintiffs’ Response:</u> No specific evidence has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>18 43. Plaintiff 19 Chamness has 20 already been 21 incorrectly 22 described as one of 23 three candidates 24 “who decline to 25 state their political 26 parties[.]”</p>	<p>Dutta Decl., Exh. A (p. 5, <i>The Argonaut</i> news piece published on May 5, 2011).</p> <p>ADMITTED as rephrased by Secretary Bowen and Intervenors.</p>
<p>22 44. Between 1891 23 and 2010, 24 candidates for state 25 and federal office 26 were permitted to 27 use the ballot label 28 of “Independent”.</p>	<p>Between 1891 and Dec. 31, 2010 (the day before SB 6 took effect), candidates were allowed to use the ballot label of “Independent”. Former Political Code §1188, <i>codified at</i> Ch. 130 Stats 1891, <i>amended by</i> Ch. 136 Stats. 1915, p.274.</p> <p>ADMITTED as rephrased by Intervenors; disputed by Secretary Bowen on ground that insufficient</p>

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	<p>evidence supports this fact.</p> <p><u>Plaintiffs’ Response:</u> No specific evidence or statute has been produced that controverts this fact. <i>See Albarran v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 707 (9<sup>th</sup> Cir. 2008) (a party opposing summary judgment must produce “specific evidence” that controverts a fact); Plaintiffs’ May 12, 2011 Opposition to Secretary Bowen’s Ex Parte Application to Defer Consideration of Plaintiffs’ Motion for Summary Judgment, at 6:7-8:1.</p>
<p>SECRETARY BOWEN’S PROPOSED FACT: 45. At the time Plaintiff Wilson cast his write-in ballot in the AD 4 general special election, he was aware that the vote would not be counted.</p>	<p>Wilson Decl. ¶6; Dutta Decl., Exh. X.</p> <p>OBJECTION as irrelevant. Plaintiff Wilson’s state of mind has no bearing on his as-applied constitutional claim: whether his fundamental rights were violated when his write-in vote was not counted in the AD 4 special general election. <i>Griffin v. Burns</i>, 570 F.2d 1065, 1074, 1076 (1<sup>st</sup> Cir. 1978) (no state law may perpetrate a “fraud upon” any class of candidates or voters under the Due Process Clause, irrespective of the state of mind of any member of that class: “[W]e are unwilling to reject appellee’s claim merely on the <i>fiction that the voters had a duty, at their peril, somehow to foresee the ruling ... invalidating their ballots.</i>”) (emphases added).</p>
<p>SECRETARY BOWEN’S PROPOSED FACT: 46. Presently there are six ballot-qualified political parties in California: American Independent, Democratic, Green, Libertarian, Peace &amp; Freedom, and Republican.</p>	<p>Waters Decl., Exh. C.</p> <p>ADMIT.</p>
<p>SECRETARY BOWEN’S</p>	<p>Waters Decl., Exh. D.</p>

1	PROPOSED FACT: 47. Seventeen political bodies are currently attempting to qualify for political party status.	ADMIT.
2	SECRETARY BOWEN'S PROPOSED FACT: 48. In the Feb. 15, 2011 special primary election in SD 28, Plaintiff Chamness received 0.55% of the vote and finished last among eight candidates.	Waters Decl., Exh. E.  ADMIT.
3	SECRETARY BOWEN'S PROPOSED FACT: 49. In the May 17, 2011 special primary election in CD 36, Plaintiff Chamness received 0.2% of the vote and finished sixteenth among seventeen candidates.	Waters Decl., Exh. F.  ADMIT.
4	SECRETARY BOWEN'S PROPOSED FACT: 50. AD 4 includes part or all of Alpine, El Dorado, Placer, and Sacramento Counties.	Waters Decl., Exh. G.  ADMIT.
5	SECRETARY BOWEN'S PROPOSED FACT: 51, Proposition 14 applies to elections held after Jan. 1, 2011.	Waters Decl., Exh. A-11.  ADMIT as rephrased: "Proposition 14 and Senate Bill 6, which apply to all state and federal elections, both took effect on Jan. 1, 2011."

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Respectfully submitted,

By: /s/ GAUTAM DUTTA, ESQ.

Attorney for Plaintiffs

MICHAEL CHAMNESS, DANIEL  
FREDERICK, and RICH WILSON