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 Defendants.)
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CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, bring this Complaint, on behalf of themselves and all other persons similarly situated, to obtain declaratory and injunctive relief, costs of suit, and attorneys’ fees from the Defendants. Plaintiffs complain and allege, upon information and belief, as follows:

NATURE OF ACTION

1. This is a class action brought by registered voters nationwide in counties using the punchcard voting system known as the “Votomatic.” In the year 2000 elections, over 500 counties in 28 states used the Votomatic system for the casting of non-absentee votes in elections. Approximately 29 percent of all registered voters in the United States, or 41 million persons, are registered in these counties, making the Votomatic the most common voting system

in the country. As used herein, "Votomatic" means all punch card voting systems in which a ballot with prescored holes is used.

2. The Defendants are companies that have designed, marketed, advertised, promoted, manufactured, serviced, sold, and/or distributed to counties throughout the United States a broad array of services and products that are integral components to the operation of the Votomatic system. Defendants have done so and continue to do so with full knowledge and awareness that the Votomatic system has a long and notorious history of failing to perform as intended, failing to perform as they have represented it to perform, routinely frustrating the intentions of the voters, and consistently disenfranchising large numbers of voters in election after election. Defendants, moreover, have falsely represented that the Votomatic system performs as intended despite its well-known and severe defects. Alternatively, Defendants have omitted to inform their clients and customers of the severe defects in the Votomatic system or of the fact that the Votomatic does not perform as intended, i.e., does not accurately count votes.

3. Despite this notorious history of disenfranchising voters and severely injuring the democratic process throughout the United States, Defendants continue to design, market, advertise, promote, manufacture, service, sell, and/or distribute their services and products for the Votomatic system. Additionally, Defendants continue to represent that the Votomatic performs as intended or, alternatively, continue to omit to inform their clients and customers of the severe defects in the Votomatic system or of the fact that the Votomatic system does not perform as intended. As a result, counties across the nation continue to use the Votomatic system as the sole method for voting and, without prompt judicial action, will continue to do so. In the fast-approaching 2002 elections--including the federal congressional elections that will determine

which major political party controls the Senate and the House of Representatives—the Votomatic poses a grave risk of severely injuring United States’ voters’ right to vote, undermining the democratic process, and throwing into doubt the outcome of numerous elections across the country.

4. Plaintiffs seek a declaration that the Defendants’ actions relating to the Votomatic system constitute unfair and deceptive trade practices and violate the Equal Protection and Due Process Clauses of the United States Constitution and other applicable law. Plaintiffs further seek a permanent injunction barring the Defendants from designing, marketing, advertising, promoting, manufacturing, servicing, selling, and/or distributing services or products for the Votomatic. An injunction is necessary in order to prevent the Defendants from continuing to engage in actions that are and will result in the ongoing disenfranchisement of voters across the country through use of the Votomatic system.

THE PARTIES, JURISDICTION AND VENUE

PLAINTIFFS

5. Plaintiffs are citizens of the United States, of legal age and competence to vote in national, state and local elections, and are properly registered to vote in the jurisdiction of their residence. Plaintiffs voted on or about November 7, 2000, and cast their ballots for their choice of the candidates running in elections that day, including elections for the President, the Senate, the House of Representatives and in state and local offices as well as referenda on various issues. Plaintiffs were required to use the Votomatic system to cast such ballots. Plaintiffs fully intend to vote in future elections in which they are eligible voters, including the 2002 federal congressional primaries for which they are eligible and the general election. Additionally,

Plaintiffs and the Class they represent are taxpayers in each of their respective counties whose tax dollars have paid for each and every election service and product, including those relating to the Votomatic system, that the Defendants have provided to any jurisdiction.

6. Plaintiff Andrea L. Wirth is a citizen of the State of Illinois and properly registered to vote in St. Clair County. Ms. Wirth voted on the Votomatic system on November 7, 2000. St. Clair County continues to use the Votomatic system.

7. Plaintiff Judy M. Kent is a citizen of the State of Illinois and properly registered to vote in St. Clair County. Ms. Kent voted on the Votomatic system on November 7, 2000. St. Clair County continues to use the Votomatic system.

8. Plaintiff Lee R. Bright is a citizen of the State of California and properly registered to vote in Los Angeles County. Ms. Bright voted on the Votomatic system on or about November 7, 2000, by absentee ballot. Los Angeles County continues to use the Votomatic system.

DEFENDANTS

9. Defendant Election Systems & Software, Inc. (“ES&S”) is a Nebraska corporation with its principal place of business in Omaha, Nebraska. ES&S is the world’s largest election management company. ES&S provides a wide range of election services, including designing, developing, manufacturing, and selling integrated hardware, software, and service solutions to automate the phases of the election process, as well as ballot printing services, ballot production software, election field site services, hardware for voting, counting, and tabulating, and election reporting software. At all times pertinent to the Complaint, ES&S designed, developed, serviced,

manufactured, and sold election products and services for use in the Votomatic system throughout the country.

10. Defendant Sequoia Pacific Systems (“Sequoia”) is a Delaware corporation with its principal place of business in Exeter, California. Sequoia is a wholly-owned subsidiary of the Smurfit Packaging Corporation, which is a wholly-owned subsidiary of the Jefferson Smurfit Group, plc of Dublin, Ireland. Sequoia provides election systems to verify and tabulate votes, as well as ballot production and printing and equipment and support in election administration. At all times pertinent to the Complaint, Sequoia Pacific Systems designed, marketed, and sold election systems, equipment, and support for use in the Votomatic system throughout the country.

11. Defendant Fidler and Chambers (a/k/a Fidler Doubleday, Inc.) (collectively “Fidler”) is an Iowa corporation with its principal place of business in Rock Island, Illinois. Fidler designs and manufactures forms and systems for voter registration and election management. At all times pertinent to the Complaint, Fidler designed, manufactured, and sold forms and systems for use in the Votomatic System throughout the country.

12. Defendant Melbourne Technical Services, Inc. (“Melbourne”) is a Florida corporation with its principal place of business in West Melbourne, Florida. Melbourne services card reader machines. At all times pertinent to the Complaint, Melbourne serviced card reader machines for use in the Votomatic System throughout the country.

13. The activities complained of herein occurred, in whole or in part, in St. Clair County. Venue is therefore appropriate in St. Clair County.

THE VOTOMATIC SYSTEM

14. The Votomatic is a punch-card voting system based on the ancient Hollerith punch card. The Hollerith punch card system was invented by Herman Hollerith, a former Census Bureau employee working in the U.S. Patent Office, in order to total the results of the 1890 Census of the United States population. Hollerith based his system in part on the railroad tickets that conductors of the time punched with information about passengers (such as hair and eye color) to prevent fraud. In 1924, the company created by Hollerith was renamed the International Business Machines company (“IBM”), which adopted the current three-inch-by-seven-inch card size and a standard hole configuration still in use today. The typical card has eighty columns and twelve rows where potential holes may be punched. In the Hollerith system, the holes were punched into a solid piece of paper either via a hand punch or, by the 1950s, by a typewriter-style keyboard.

15. The Hollerith-IBM punch card system was widely used for numerous business applications throughout the 20th Century. In business use, each column depicted one character with each character having a unique pattern of typically no more than three holes. Hollerith cards are read by card reader machines that detect light passing through the holes. A standard computer code was developed, called the Hollerith code, that interpreted the patterns detected by the card readers.

16. The IBM punch card system was adapted for voting and became the Votomatic based on a concept introduced by Joseph P. Harris, a political science professor at the University of California, Berkeley. Harris borrowed an IBM Portapunch machine and, working with retired engineering professor William S. Rouverol, put together a prototype of the Votomatic.

17. In the early 1960s, Harris patented the Votomatic, formed a company called Harris Votomatic, Inc., and began marketing the invention.

18. In 1965, IBM acquired the patent rights to the Votomatic and the assets of Harris' company and began devising a number of changes with Harris acting as a consultant.

19. In the Votomatic system, the computer card has pre-scored holes. The voter inserts the computer card into a hollow mechanical holder. A hinged booklet is attached to the mechanical holder and the pages of the booklet are crimped to a hinge. The holder and booklet device permits the exposure of only one row of the punch card to the view of the voter per page of the booklet. As the pages are turned, a different row of the punch card is exposed for each page. All voting information and instructions are presented on the pages of the booklet and thus the names of the candidates and the issue choices must be positioned on the pages so that each is next to the appropriate voting location on the card. The card itself bears no printed information other than the numbers assigned to each hole.

20. In the standard "312 position" card, every third column of pre-scored rectangular hole positions are used, beginning with column 5 and ending with column 80; these 26 usable columns combined with the twelve rows per column provide for 312 total usable hole positions. In short, the Votomatic system maximizes the number of votes that may be cast on a ballot paper by using numerous small holes and transferring all the associated voting information onto the booklet that is part of the mechanical vote-recording device.

21. Voters attempt to cast their votes on the Votomatic by pushing a stylus through one of the pre-scored holes, a process that is supposed to dislodge a "chad," i.e., the piece of paper that fills the pre-scored hole. Underneath the card is a malleable surface with slots,

beneath which are small chambers. This surface and chamber structure, called a “T-strip,” is meant to remove the chad from the computer card and leave a hole when the voter pushes the stylus through the card. Chad that are successfully removed remain in the T-strip chambers. The voter then removes the card from the vote recording device.

22. The Votomatic ballots are fed into card reader machines for counting of votes, either at the precinct or at a centralized location for the entire county, such as a courthouse. The card reader machines are meant to detect the holes representing votes and to send the information about the holes via computer cable into a computer. A county courthouse may have perhaps twenty card reader machines simultaneously operating and sending information into one computer. The computer contains a modern extension of Hollerith code - software that has been designed specifically for the purpose of interpreting the patterns associated with the particular elections and initiatives at issue. The software contains numerous instructions for the machine tabulation of votes, including those for accepting and rejecting votes.

23. By the 1980s, computer disks replaced IBM punch cards in almost all business applications. Upon information and belief, the only current applications for IBM-Hollerith technology are in (1) accessing old information that was stored years ago on Hollerith cards and can thus only be retrieved by use of card readers, and (2) casting votes in elections and referenda. While every other information system in the United States has been adapted to the extraordinary capabilities of modern computers, the precious voting right of millions of Americans is contingent upon the proper functioning of a system that dates to the stone age of computers. Worse, the adaptation of that system to voting usage has resulted in numerous and severe defects.

DEFECTS IN THE VOTOMATIC SYSTEM

24. The Votomatic system contains a host of well-known defects that routinely frustrate the intentions of voters, disenfranchise large numbers of voters, and severely undermine the democratic process.

25. When the voter uses the stylus to attempt to punch out a chad, the chad frequently does not detach from the card. This occurs when the holes in the card are not perfectly aligned over the slots in the T-strips. Such misalignment occurs frequently, and, when it does, voters--unaware of the misalignment--proceed with their voting attempt. This also occurs when T-strips are insufficiently supple, either as originally manufactured or from the passage of time, to permit easy penetration by the stylus. This also occurs when the T-strips become worn through repeated usage. This also occurs when a sufficient number of chad accumulate in the T-strips' chambers to block penetration by the stylus.

26. Chad that have not been entirely dislodged can: 1) remain attached by one, two, or three corners ("hanging chad"), 2) remain attached at all four corners, even though the stylus has penetrated the chad and made a hole ("pregnant chad"); or 3) become dented, indicating that some pressure has been applied by the stylus, even though there has been no penetration through the card either in the form of a hole or a detachment of the chad ("dimpled chad").

27. Dimpled chad are not read as punched holes by the Votomatic system's card reader machines, which fail to detect sufficient light through the pre-scored hole to record a vote. The computer software thus does not record a vote despite the voter's intention to cast a vote. The same is generally true of pregnant chad depending on the amount of light that penetrates.

28. Hanging chad also frequently prevent the card reader machines from accurately recording ballots for several reasons: 1) hanging chad frequently remain in place or fall back into place, thus covering their holes; 2) hanging chad that have not fully detached frequently become detached during the vote tabulation process and then, as free-moving chad, become stuck in the card reader machines and cause the machines to count votes inaccurately by blocking light; 3) chad that have not fully detached frequently become detached during the vote tabulation process and then, as free-moving chad, become lodged in other holes in the same card or those of another voter's card, mimicking an un-punched hole and causing miscounting.

29. A chad also may fail completely to detach due to the interaction of the stylus and the T-strip. To function properly, the stylus must be inserted vertically into the hole. But many voters naturally push the stylus in at an angle, which frequently results in an incompletely punched hole.

30. In addition to the foregoing, chad that voters have not intended to dislodge nonetheless frequently become dislodged. This results from inadvertent touching of the chad with the stylus, from the inherent nature of the pre-scored holes, manufacturing variations in the card stock and the pre-scoring process, and from the routine handling of the cards before, during and after the attempt at voting.

31. The foregoing defects routinely result in the erroneous reporting of overvotes and undervotes. An overvote occurs when the machine detects two votes in the same election or referendum. An undervote occurs when the machine detects no vote in a particular election or referendum.

32. The Votomatic has numerous other inherent defects. The following are some of the most common examples:

- a) The printing of the inserts for the vote-recorder must be exceptionally precise so that the arrows or other printed indications associated with a candidate's name line up with the proper hole. The difficulty in ensuring precise printing to correlate with the pre-scored holes routinely results in election problems that disenfranchise voters.
- b) Minor variations in the quality of the card stock or the pre-scored holes can exacerbate the chad problems. Moreover, minor variations in the moisture content of the cards caused by ambient humidity or even human perspiration from touching the cards can cause them to swell and the card reader machines will then spit them out unread.
- c) Voters frequently observe the Votomatic booklet from an angle rather than from a perpendicular viewpoint, thus causing them to misunderstand the proper places to punch holes.
- d) The nature of the Votomatic booklet routinely causes significant voter confusion regarding the location and the number of holes that must be punched for each election, causing numerous overvotes and undervotes.
- e) Card reader machines frequently take in more than one ballot card at a time, causing miscounting of votes. Further, card readers frequently jam, causing miscounting of votes.

- f) Punch card voting systems are the only voting systems in which voters must request a new ballot if the voter makes a mistake. Voters often hesitate to do this or are unaware that they may do this, thus resulting in numerous votes being unnecessarily thrown out.
- g) The Votomatic is also the only system in which the candidates' names do not appear on the ballots and thus voters have no confirmation by looking at the punched ballot whether they punched the correct holes or even the correct number of holes.
- h) Computer software for counting votes and tabulating vote totals frequently malfunction, causing election-night chaos and requiring reprogramming in the middle of the election.

THE VOTOMATIC'S NOTORIOUS HISTORY

33. The first significant use of the Votomatic was in the September, 1964 primary races in Fulton and DeKalb Counties, Georgia. In the November, 1964 Presidential election, the Votomatic was used in these two jurisdictions as well as in Lane County, Oregon and in San Juaquin and Monterey Counties in California.

34. The Votomatic was then marketed across the country. Problems with the Votomatic became evident right away.

35. In 1966, pursuant to lobbying by IBM, the town of Braintree, Massachusetts conducted a test run on an election with the Votomatic. The card counting machine jammed and officials had to conduct a partial hand recount. The test somehow was considered a success nonetheless and, as a result of further lobbying by IBM, the Massachusetts legislature authorized

transportation of ballots away from the precincts prior to counting, thus enabling use of the Votomatic, which at that time did not have precinct-counting capability.

36. In May, 1968 in an election in Klamath County, Oregon, candidates' positions on the ballots were rotated in the precincts to avoid giving any candidate the advantage of the top position, but in more than a fourth of the precincts both kinds of ballots were inadvertently used. Given the inherent nature of the Votomatic, voters had no way of knowing of the error and proceeded to cast votes for candidates for whom they did not intend to vote.

37. In October, 1968, an inventor named Ira G. Laws submitted a patent application for alterations to the Votomatic in order to attempt to solve the problem of chad failing to detach. Laws' patent application stated:

In some instances, after the stylus is inserted through a selected prescored area on the card and is then withdrawn the chip or card portion within the selected prescored area was merely folded downwardly on the card along an edge but still remained attached to the ballot. This often resulted in an inaccurate counting and tabulation of the vote when the cards were later processed or counted in a vote tabulating machine.

Laws recognized that his invention did not solve the problem, as he stated after the year 2000 presidential election: "We didn't think we had eliminated the hanging chad problem, but we thought we had made an improvement." Laws further stated, "It's not the fault of the voters that the chad does not punch out occasionally. I think it's just inherent in the device."

38. In November, 1968, in Missoula County, Montana, votes cast on the Votomatic in the presidential race were switched due to a programming error, causing Nixon to be defeated in heavily Republican precincts and Humphrey to be defeated in heavily Democratic ones.

39. As a result of the public relations problems for IBM caused by the Votomatic, in 1969 IBM sold its interest in the system and licensed five companies to produce and sell the Votomatic.

40. Of the five, the most successful company by far was Computer Election Systems of Berkeley, California (“CES”). CES was founded by former IBM employees for the purpose of producing, marketing, and selling the Votomatic. CES is the predecessor-in-interest to Defendant ES&S.

41. Votomatic machines became widespread in the 1970s as a replacement for the old closet-sized, lever-operated voting booths. The primary advantage of the Votomatic was its cost: several of these inexpensive machines could be used at each precinct, thus accommodating a larger numbers of voters than the lever machines but at the cost of inaccurate recording and tabulation of votes. The problems with the Votomatic continued.

42. In the June, 1970, Los Angeles primary elections, in which votes were cast on the Votomatic, one half of one percent of all ballots failed to be read on initial processing. Observers noted that when the ballot inspectors fanned the two-inch stacks of cards after receiving them, clouds of incompletely removed chad fell out. In addition, numerous card readers jammed and many of the jams were caused by chad. Cards deformed by the card readers were recreated by election workers who punched holes in fresh ballots. The central computer stopped operating six times during the counting. Five hundred precincts were overlooked.

43. Two months later, in August, 1970, Detroit held primary elections in which it used the Votomatic for the first time. There were massive problems, including failed chad

removal, misplaced punches, and card reader jams. A report on the Detroit primary election concluded that:

Design inadequacies of the voting device (the ballot holder) resulted in its failure to meet the close tolerances necessary to avoid punctures and hanging chad. Excess space between the porta-punch pad and the perforated template on some voting devices allowed the ballot card to buckle slightly within the device so that the template hole and the scored rectangles were not aligned. . . . Lack of rigidity of the template and its thinness allowed the stylus to be inserted through the template at an acute angle and consequently to strike the ballot card off-center of the rectangle. . . . Since the ballot labeling was always on the left side of the ballot card, it was natural for a left-handed voter to position his hand above rather than to the left of the ballot card. In this position, the temptation to angle the stylus is strong.

In addition, chad fell out during repeat counts, causing the vote totals to change. Major problems of a similar nature occurred again in the November, 1970 general elections, after which the city dropped the Votomatic system.

44. Harris County, Texas, which includes the City of Houston, used the Votomatic for the first time in a November, 1970 election for approximately 80,000 voters. Card readers jammed repeatedly. Numerous ballot cards were improperly punched.

45. In 1971, CES sought approval for use of the Votomatic in West Virginia. Both of the state's two examiners rejected the system due in part to the ability to overvote on the Votomatic. Overvotes are impossible to cast on automated voting systems that do not use punch cards. The West Virginia Secretary of State, Jay Rockefeller, reviewed the examiners' report and appointed two new examiners, who approved the system.

46. In the general elections of November, 1972 in Travis County, Texas there were serious problems with card readers jamming and with software malfunctions.

47. In the general elections of November, 1973 in Washington Township, New Jersey, each voter was given two cards but the card readers misread votes due to the length of the two cards differing by only one sixteenth of an inch.

48. In 1975, the National Bureau of Standards, which is part of the Department of Commerce, issued a report on the use of computer technology in voting and recited numerous problems with the Votomatic, including the problems of hanging chad and jamming card readers that had occurred in jurisdictions across the country over the previous seven years. The report stated as follows:

In an election, the system is to be used by voters of varying abilities. The concept of the vote-tallying system must be that it is there to serve the voters, and the system must be geared so that the overwhelming majority of voters, approaching 100%, can use it to record their votes as they intend.

49. The outcome of a legislative election in Los Angeles in 1976, in which the Votomatic was used, was reversed twice, once by machine recount and once by a hand recount, in which every ballot was held up to the light and the holes counted. Hanging chad and “bulging” chad accounted for the reversals in the election result.

50. Dade County, Florida purchased its \$1.7 million Votomatic election system from CES in 1977. At that time, CES stated to Elections Supervisor David Leahy that, “it was impossible to create hanging chad.” But in that same year in the first election in the county using the Votomatic, an unsuccessful Miami Beach City Council candidate filed suit alleging that the system improperly invalidated 710 votes and thus changed the outcome of the election. The case was dismissed under the election laws that, at the time, offered no relief absent vote fraud.

51. In a 1978 race for Ohio Secretary of State, 55,000 votes cast on the Votomatic were invalidated as overvotes.

52. In a 1980 primary election in Detroit on a newly installed Votomatic system, 15,000 votes, which was one out of every nine ballots cast, were invalidated as overvotes.

53. CES sought certification of the Votomatic in Pennsylvania in 1980. A new state examiner for computerized elections equipment, Michael Shamos, has described his first impression of the Votomatic in 1980 as follows: “antique, obsolete, unreliable technology packed with a systems approach that was even more unreliable.” Shamos, whose primary occupation was (and is) computer science professor at Carnegie Mellon University, submitted a report for the state bureau of elections recommending that “[t]he Votomatic must be denied certification.” His recommendation was joined by one of the other two examiners. Nonetheless, the state certified the Votomatic.

54. In 1980 elections across the country, card readers for Votomatic ballots broke down in Michigan, Arkansas, Indiana and Utah. In Bradenton, Florida, a seventh of the county’s precincts had to be recounted because soggy, warped and mangled ballots jammed readers. In Bexar County, Texas the Votomatic software could not tally more than 9,000 votes for any one race and thus invalidated numerous votes for Ronald Reagan and two other Republican candidates, whereafter Bexar County abandoned the Votomatic system.

55. In 1982, the Miami Herald reported that the “tiny-square shaped chad clinging to the backs of ballots have been a constant problem.” Further, the Votomatic had established a reputation for a broad array of consistent and vexatious problems in Dade County, summarized in 1982 by the Herald:

Election Night, 8:15 p.m. – A teenage girl hurries over to pick up a cardboard tray stacked with ballots and slides them to the end of the table. Suddenly, the tray tips and the white cards are strewn all over the tile floor.

10 p.m. – Ballots are stacked on a table, awaiting to go zipping through eight computerized readers. Without warning, half the machines lock up. Someone has inadvertently pushed a button with his leg. Nine precincts will have to be counted over.

11 p.m. – The master computer is swallowing another tape crammed with ballot data when everything suddenly freezes. The disc drive that holds the entire election program has malfunctioned. A computer operator hurriedly pulls the disc out and slips it into an identical machine. “I didn’t want to take any chances,” he says later, explaining why he switched machines so quickly. “The election is too sensitive.”

By most accounts, the 1982 general election in Dade County went smoothly compared with some past ones. No computerized readers shut down permanently. No programmers were hauled out of bed to troubleshoot stubborn computers. No rain-soaked ballots had to be dried out with hair dryers.

But, as always, there were problems.

At least 19 precincts had to be counted twice for one reason or another. One precinct arrived at the reading machines minus a few hundred cards that were found. And the combination ballots and computer-punch cards came in, as usual, with thousands of tiny squares only halfway punched out. Welcome to Dade County’s computerized election system.

56. In 1981, Joseph Ahmann, a former IBM engineer who helped with early design of the Votomatic in the 1960s and was then working for CES, received a patent on a new kind of stylus for the Votomatic. The new stylus has a softer tip offering two benefits: it does less damage to the T-strips and thus can avert some partial punches and it is also better at making a completely punched hole when a voter inserts the stylus at an angle. Ahmann’s patent application recognized that voters frequently would move an inserted stylus to the side and thus cause the existing stylus to break.

57. Later in the same year, Ahmann received a patent on a Votomatic design in which certain parts could be removed. Ahmann's patent application frankly acknowledged some of the "defect[s]" in the Votomatic:

- * [I]t has been observed that a partially punched chip [chad] has been left hanging onto a card, after the punch was withdrawn because the card supporting the surface of the punch board has become so clogged with chips as to prevent a clean punching operation. Incompletely punched cards can cause serious errors to occur in data processing utilizing such cards.
- * In punch card voting devices, a template has been used to guide the voter's punch or stylus onto the selected punch position. If, however, the voter does not hold the voting punch straight up and down when punching, it is possible under certain temperature and humidity conditions to pull the template toward the voter a few thousandths of an inch, sufficient to prevent complete removal of the chad when the stylus is inserted. This can produce what is called a "hanging chad," as the chad-piece of the card is still attached to the card by one or two of the frangible holding points. Through analysis and experience, it has been found that the construction of the punch boards is principally responsible for these problems. It must be emphasized that the presence of even one incompletely punched chip in a run of several thousand tabulating cards is in most cases too great a defect to be tolerated.
- * [T]he template stops of the punch-bed, or punch frame as it is called in punch card voting, should be within a 0.007 inch tolerance zone for proper operation of the punch card voting device. With the ABS plastic, as has been used, having an expansion characteristic which allows 0.0005 inch longitudinal growth or expansion over the length of the punch frame per degree Fahrenheit, it is easily seen that the critical dimensions are exceeded when 14.degree. F. variations from an average 72.degree. F. are exceeded in a polling place, i.e., over 86.degree. F. or under 58.degree. F. Temperatures over 86.degree. F. or under 58.degree. F. may be found in garages, gymnasiums, halls, etc., which are used as polling places. Therefore, the material typically used for punch boards in punch card voting can and does contribute to potentially unreadable votes, because of hanging chad or mispunched cards.
- * Another defect of prior art punch frames has been that in order to retain the template in the device in its proper position during and between uses, a template retaining clip has been employed. The clips have often been installed improperly and have interfered with the template, causing the voting device to malfunction.

58. In the November, 1982 elections in Elkhart County, Indiana, the Votomatic system resulted in three significant election problems. In the Town Board election, more votes were reported as cast than there were eligible voters. In the County Council election, votes for candidates in Districts 2 and 3 were interchanged. And in the contest for state representative, the vote totals for each candidate were incorrect as a result of an incorrect punch position for one candidate and a computer's misinterpretation of some ballots on which both a straight party line vote and an individual vote for one of the candidates were cast. The Town Board election was settled by an agreement that overturned the election results and disenfranchised voters who had properly voted. In the County Council and state representative elections, employees of the vendor were dispatched to Elkhart County and allegedly resolved the problems by inserting control cards into the election computers that altered the vote totals. In 1986, during a statewide recount, a computer program for counting ballots in Elkhart County caused erroneous counts due to improper counting of ballots with straight ticket votes.

59. In primary elections in Wisconsin in 1982 and 1984, between 14 and 21 percent of all votes cast were rejected as overvotes. A statewide investigation later reported that these results demonstrated that "there was a significant flaw in the punch card voting system." The state legislature implemented a change in the law requiring the use of a party punch page but this only reduced improper cross-over voting to between four and six percent.

60. In a 1984 Republican primary for a state representative seat from Dade County, Florida, three candidates ran and the result was chaos. In a machine recount, one candidate lost 13 votes, another lost 58 votes and a third gained 19.

61. In the November, 1984 election for Palm Beach County Property Appraiser, also in Florida and also in a Votomatic jurisdiction, defeated candidate David Anderson sued the winning candidate, Rebecca Walker, and sought a recount. The lawsuit alleged that “[t]here were irregular counts from the computer on each total, each time it was run.” Anderson further alleged that numerous chad had not been completely dislodged and that the Votomatic system was fundamentally unable to accurately count votes: “[i]t is apparent that because of the type of equipment and method used, that it is impossible to accurately count any election.” It came to light in the litigation that there had been a recount in another Palm Beach County contest in the same election cycle that resulted in a change in the margin of victory from 177 votes to 242 votes. Palm Beach County election supervisor Jackie Winchester stated that the change in vote totals resulted from hanging chad that fell out before the recount. A recount of ten precincts in the Anderson-Walker contest convinced Anderson that the changes would not affect the outcome of his election and he dropped his challenge.

62. In the 1984 general election in Ohio, approximately 137,000 out of 4.7 million votes in Ohio registered as invalid ballots, mostly as overvotes.

63. In a 1984 election for Maryland’s Carroll County School Board President, the Votomatic system failed to detect approximately 13,000 votes, mostly for incumbent T. Edward Lippy, whom initial results showed had lost to challenger Wayne Cogswell . A recount resulted in Lippy prevailing. Another recount conducted pursuant to a lawsuit by Cogswell showed Lippy still prevailing, but by a different margin. Lippy was certified the winner. Investigation attributed the problem to software that failed to recognize votes properly cast in the same column of pre-scored holes for the school board race and a home rule referendum.

64. In an April, 1985 Dallas mayoral election, an initial count showed incumbent Starke Taylor narrowly avoiding a runoff election by garnering several hundred votes more than fifty percent of the total votes cast. The leading challenger, Max Goldblatt, was less than 4,000 votes behind Starke. The Votomatic system was plagued with problems: more than 3 percent of voters' ballots were invalidated because they were punched in the wrong places; chad gummed up machines that then broke down and software glitches kept changing vote totals all election night. The problems with the 1985 Dallas elections resulted in an investigation by the Texas Attorney General and led to enactment of statewide election reforms to create an audit trail and standardized procedures for handling the all-too-common election irregularities caused by the Votomatic. President-elect George W. Bush was a registered voter in Dallas in 1985.

65. In Moline, Illinois in April, 1985, a malfunctioning card reader caused inaccurate counting of numerous votes for city council races. As a result, a losing candidate for alderman, Charles Reynolds, was declared the winner after it was discovered that a malfunctioning timing belt in a card reading machine had deprived him of 135 votes. Reynolds only prevailed as the correct winner after an exceptional series of events: another candidate for alderman, Earl Wendt, had lost his own race by two votes and timely demanded a recount, which revealed the card reader malfunction and that Wendt had actually lost by ninety votes. By this time Reynolds had missed the deadline for contesting his election but the local prosecutor brought an action accusing city council members of wrongly holding office. A court, refusing to tolerate the disenfranchisement of voters for the sake of an arbitrary deadline, ordered the recount that put Reynolds into office. For three months, the losing candidate wrongly had held office.

66. In a 1985 election for City Council Ward 2 in North Attleboro, Massachusetts, incumbent Tony Viveiros beat Thomas Dudson by one vote in the initial count. A hand recount of the Votomatic ballots in which ballots were held up to the light and hanging chad were examined for the number of corners of detachment, Dudson prevailed by one vote.

67. In Stark County, Ohio in May, 1986, a recount in a close Democratic primary race for County Commissioner produced 165 votes more than the original tally and a different winner. However, the first recount result was itself reversed pursuant to a court-supervised second recount (using both manual and machine counting) that showed the original winner prevailed by 28 votes. The recount focused on the problem of hanging and “bulging” chad resulting from use of the Votomatic. The court appointed two masters who supervised forty two-person counting teams. Only the masters were permitted to remove chad; they removed 9 hanging chad and 19 bulging chad. One of the masters stated that it was obvious that the voters had unsuccessfully attempted to dislodge chad on some ballots but that the chad had been pressed back into position, probably when the cards were stacked.

68. In Gwinnet County, Georgia in 1986, the result of a state senate race was overturned because of “computer hardware” problems associated with the Votomatic, i.e., chad that were not completely dislodged or stray chad in the card reader machines that filled in properly punched holes. Challenger Steve Pate was initially reported as having won the race by 77 votes. A recount gave incumbent Donn Peevy a winning margin of 77 votes. The recount was actually performed twice on two different computers yielding two different results. The Georgia Tech Research Institute (“GTRI”) was retained by the Georgia Secretary of State to investigate. GTRI analyzed the recount and concluded:

[E]verything that could have been done to insure the accuracy of the recount was, in fact, done and the discrepancies observed are inherent in this type of system.

69. The Illinois State Board of Elections undertook tests of vote-counting computer systems from 1983 to 1987 and found numerous election problems related to the Votomatic that involved the incorrect counting of votes, including software problems, ballot card stock problems, and a card reader in Will County in 1984 that jammed so severely that it almost completely destroyed ballots. The testing in Grundy County revealed that forty-seven percent of precincts had at least one of five different problems.

70. In February, 1987, John Ahmann, the former IBM engineer who assisted with the design of the original Votomatic, received a patent for a stylus for disabled persons. The patent again acknowledged serious problems created by prior styluses:

On other stylus devices previously devised, a spherical member of molded rubber material was attached to a rigid handle to enable the stylus to be gripped more firmly, particularly by handicapped persons. However, problems arose with such stylus devices because, for some persons, the full spherical member was difficult to grip firmly and with a person's hand on it, the target hole for the stylus became difficult to see. Also, in some instances, the spherical member was gripped so that an inadvertent side load by the user caused the cylindrical handle to break along a through-hole provided for the end of the retaining chain. During periods where voting procedures are taking place within a relatively short time period, any breakage or malfunction of the voting equipment, however small, created a serious problem.

71. In 1987, an unsuccessful African-American candidate for President of the St. Louis Board of Alderman who narrowly lost the Democratic primary for that office, Michael V. Roberts, sued elections officials, charging that the Votomatic system discriminated against African-American voters. A federal court held that use of the Votomatic had a discriminatory effect by invalidating a large number of votes in minority precincts and thus violated the Voting

Rights Act. The court found that the result would not have been different in Roberts' race but ordered that in all future elections, officials must count all ballots validly cast but rejected by the Votomatic and take certain voter education measures on the use of the Votomatic. The Eighth Circuit Court of Appeals reversed, holding that, as a candidate for office, Roberts was not an "aggrieved person" and thus, unlike a voter, lacked standing to bring a Voting Rights Act claim. However, the appeals court's majority opinion did not address the merits.

72. In August, 1988 the National Bureau of Standards issued a thorough report on computerized vote-tallying systems. The report reviewed and documented many of the common problems with the Votomatic. The report also noted that a new type of spring loaded stylus had been introduced that does not require a pre-scored card and that the new stylus, which also requires a change in the Votomatic vote-recorder's internal construction, had been used in St. Lucie County, Florida. The report's primary recommendation was that the Votomatic system be abolished. It was not abolished, however, and several months later it caused some of its most serious injuries to the democratic process to date.

73. The November, 1988 U.S. Senate race between Democrat Buddy Mackay and Republican Connie Mack in Florida is one of the most notorious election disasters in the nefarious career of the Votomatic system. Mack "won" by 34,518 votes out of more than 4 million cast in an election in which there were significant and highly unlikely differences between the vote totals for President and for U.S. Senate. In four popular counties where Mackay was ahead (Dade, Hillsborough, Palm Beach, and Sarasota), the Votomatic system recorded over 233,000 votes more in the presidential race than in the U.S. Senate race. All four counties used the Votomatic and all four counties experienced much more significant falloff

(undervotes plus overvotes) than other counties. In these four counties, more people allegedly voted in such races as state treasurer and secretary of state than in the U.S. Senate race, even though the Mack-Mackay contest was a bitter, well publicized contest for a higher office. If the incredible Votomatic results were to be believed, one voter in twelve failed to cast a vote for president in Dade and one in every five—*20 percent*--failed to cast a vote for Senate. An analysis by the Miami News revealed that falloff in the presidential and Senate races was highest in precincts where Mackay voters dominated: in the Senate race there was a 22 percent falloff in Hispanic precincts, 28 percent in heavily Jewish/elderly precincts, and 31 percent in inner-city precincts. Mackay commented that “the thing that’s sad to me is not only that hundreds of thousands of voters were disenfranchised, but that they were the voters most vulnerable to a lack of government services – blacks and the elderly.” The Miami News concluded in November, 1988, that, according to its analysis, “the C.E.S. system may in fact have been decisive in giving the Senate seat to Mack.” Mack held the seat for twelve years.

74. Also in November, 1988, there was an exceptionally close election for Florida House District 112 from Dade County. Democrat Tom Easterly initially was victorious over Republican Bob Starks by three votes. A recount reported 16 more votes for each candidate. Another recount found fourteen more votes for Easterly and six more for Starks.

75. Following the 1988 Florida races, commentators decried the Votomatic system. For example, Miami News editorial writer Howard Kleiberg wrote in November, 1988:

We cannot accept the excuse that there is no better way to tabulate votes; there has to be. Voters should not and cannot be disenfranchised because the current system of vote counting has a built-in glitch, to wit: If the chad is left attached to the ballot, it may cover the hole again in the recount and not count as a vote cast.

This is not what the Founding Fathers and subsequent Supreme Court decisions have called for. Everyone's vote is to be counted.

Do voters have to stand before the ballot box plucking their ballots as one would a chicken, for fear their vote may not count?

Since computer punch-card systems are used more and more nationwide, it's a national problem. How many races across the country were determined by pinheads of paper clinging to the ballot?

There needs to be a national investigation, perhaps by the Congress or a presidential commission – if not the Federal Bureau of Investigation.

To paraphrase: If it is broke, then fix it!

76. The 1988 Florida election debacles also resulted in a call for a state legislative investigation. State representative Mike Abrams of North Miami Beach called upon the Speaker of the State House of Representatives, “to direct the Elections and Ethics Committee to look at the full range of issues that may have caused an alarming falloff in counties where the C.E.S. computerized system was used.” Abrams stated at the time that, “I think the system may have an intrinsic flaw.” But the calls by the press and Representative Abrams went unheeded.

77. Also in November, 1988:

a) The New Yorker magazine published a lengthy article regarding computerized voting technology reporting that hanging and indented chad were common problems and that the process of determining a voter's intent from such chad had acquired a nickname, “chadology.” The article quoted Kenneth Hazlett, who designed the original software for the Votomatic and contributed funds for startup of Harris Votomatic, Inc., as stating that “hanging chad has been with us since the invention of the Votomatic.”

b) A non-profit organization, ECRI, produced a guidebook for election administrators that recommended against use of the Votomatic in light of chad problems. ECRI advocated that if the Votomatic must be used, administrators employ a recent modification (a punch and die stylus that also required modifications to the voting device) that eliminated the pre-scored cards altogether.

78. The following year, in the 1989 gubernatorial race in Virginia, Democrat L. Douglas Wilder was forced into a recount after he was certified as the winner with a margin of less than 7,000 votes. The ultimate outcome was delayed until mid-December, with competing camps trading charges over hanging chad and dimpled chad from the flawed Votomatic system. Wilder eventually prevailed.

79. In 1991, taxpayer activist Al Hogan lost a seat on the Oakland Park City Council in Broward County, Florida by three votes. He appealed to the canvassing board for a recount but lost, even though the board acknowledged that hanging chad from the Votomatic might have cost him votes.

80. In June, 1992, three political science professors in Ohio published a study of the Votomatic in the *Western Political Quarterly*. In the study, subjects observed mock campaign commercials and voted on one of three systems: old fashioned paper and pencil, the Votomatic, and a direct recording electronic device. The study confirmed what had been reported through election statistics: the Votomatic voters were far more likely to cast both undervotes and overvotes. The study concluded:

Punch-card voting systems present a technological barrier to voting which results in reducing the number of votes cast in a field race or in overvoting

which invalidates the entire ballot. . . . [T]he technological disenfranchisement concomitant with the use of the punch-card system causes millions of votes to be lost in field race elections across the nation each election cycle. Clearly this is an unsatisfactory situation for supporters of representative democracy.

(emphasis in original).

81. The March 23, 1993 general election in St. Petersburg, Florida, in which the Votomatic system was used, showed that 7,331 registered voters and 1,429 votes were cast in a precinct that in fact had no registered voters. The Florida Business Council filed an election protest in Pinellas County Circuit Court and, after it investigated the incident, submitted eleven recommendations to the court, including the following:

The use of pre-etched ballot cards must be discontinued in favor of a system that uses a spring-loaded hole punching stylus.

The Florida Business Council president noted that the perforations in the pre-etched cards can come lose, invalidating a person's vote. The Tampa Tribune reported in June, 1993 that "the type of ballots used in the St. Petersburg election is prone to error, experts say" and quoted Princeton computer expert Howard Strauss as follows:

No one on the planet should use those prepunched cards. I have told federal election officials for years to ban those. They are used because they are cheap.

In response to the controversy over the St. Petersburg election caused by the Votomatic, the non-profit organization Computer Professionals for Social Responsibility called upon Attorney General Janet Reno to investigate.

82. In May, 1993, in a special election in Wisconsin to fill the U.S. House seat vacated by Les Aspin when he became Defense Secretary, Democrat Peter Barca prevailed over Republican Mark Neumann by 675 votes but Republicans angrily protested a ruling by election officials excluding as blanks 1100 Votomatic ballots on which voters slightly misplaced punch holes. This contest resulted in a statewide study of punch card voting showing that there are in two to four times more uncounted ballots using the Votomatic than other systems. The report to the state elections board stated that “punch card voting is a flawed means of automated voting” and that “the level of voter error on punch card voting systems exceeds an acceptable level.” The state declined to ban the Votomatic from jurisdictions currently using it when numerous towns protested they could not afford new equipment. The state elections board did prohibit jurisdictions from adopting the Votomatic system, however.

83. In 1993, Broward County Elections Supervisor Jane Carroll wrote a series of memoranda to the County’s Election Commission decrying the serious problems with the Votomatic and stridently urging a new system be adopted. But lobbying by companies with a financial interest in the Votomatic system derailed the proposal.

84. In an acrimonious election in January, 1995 to build a new middle school in North Attleboro, Massachusetts, an initial Votomatic count showed voters approved the school by 158 votes. A recount of the ballots resulted in a different margin. Numerous chad were hanging on the ballot cards during the recount. Hardly any of the cards had gone through the card reader the first time. Numerous ballots were punched in the wrong place, possibly due to misalignment problems. After the election, the town abolished use of the Votomatic. William Crowley, an Attleboro election commissioner recently stated that

We would have disagreements every election because the count was off. If we had 1,000 ballots, maybe the count would come out 995. On occasion, we'd run them through two or three times until the count came close to what it was supposed to be. That's sad but that's the way it worked. Those machines just weren't 100 percent.

85. In Brevard County, Florida in 1996--the last presidential election tallied on the Votomatic in that county--the Votomatic failed to record a presidential vote for 26 of every 1,000 voters. In that same county, in 2000, using a different voting system, the proportion fell to less than two of every 1,000 presidential ballots cast. Assistant Elections Supervisor Gayle Graham recently stated that “[w]e knew we had voters out there who were being disenfranchised because of overvotes and undervotes. . . . So we switched.”

86. Swapping from punch-card ballots to an alternate voting system in Volusia County, Florida also led to a steep drop in rejected ballots. With the Votomatic, 26 of every 1,000 voters failed to cast valid presidential votes; after the switch, that number fell to just three of every 1,000.

87. In the 1996 Democratic primary race for the United States House of Representatives in the 10th congressional district of Massachusetts, Philip W. Johnston initially prevailed over William D. Delahunt by 288 votes. Votes were cast on the Votomatic. A recount showed Johnston ahead by only 175 votes based upon judgments regarding pregnant and dimpled chad. But a large number of votes were still rejected, including nearly 23 percent of the votes from the town of Weymouth. Delahunt sued in state court and won by a judge's in-chambers examination of contested ballots yielding a margin of 108 votes for Delahunt. Delahunt ultimately won the general election. In a New York Times opinion article following the 2000

presidential election, Johnston referred to the Votomatic ballots as “those accursed punch-tab ballots that had helped to destroy my hopes of holding a seat in Congress [and] were now going to decide who would be the next occupant of the White House.” Delahunt’s attorney was not fond of the Votomatic system either, even though he prevailed in his client’s case. “People are being disenfranchised,” attorney Haskell Kassler publicly stated in October, 1996. “It’s a broken system. It’s a system that doesn’t work.”

88. As a result of the Johnston-Delahunt primary, Massachusetts Secretary of State William Galvin determined that the Votomatic was inherently flawed and, in October, 1997, he banned its use in Massachusetts. In his order, Galvin stated as follows:

Punch cards were originally approved by this office in 1968. At the time, the punch cards replaced paper ballots in the municipalities that elected to use them, and allowed such municipalities to count the votes with aid of the newest technology, the computer. However, for some time, this office has been seriously concerned with the accuracy and reliability of punch cards. In the past year alone the outcomes of several punch card elections have been challenged.

Municipalities using punch cards have consistently reported a significantly higher percentage of blank ballots than has been reported in municipalities using optical scanners, lever machines, and paper ballots. Additionally, in recounts of election results where punch cards have been used, review of such ballots has shown that often the paper tab, which must be cleanly severed to indicate a vote, has not been so severed and remains partially attached to the ballot. Such recounts have also demonstrated that often a ballot that does not appear to be marked will actually show an indentation on the tab, which is still fully attached to the ballot. These systemic flaws have changed the outcome of a number of elections, as ballots read by the computer as blank have actually been found to contain voter’s identifiable choices.

Punch Cards have proven unreliable and inaccurate, and therefore do not conform to the requirements of law Accordingly, I hereby revoke approval of the Votomatic 235 punch card devices for use in the Commonwealth.

89. During the general elections across Massachusetts in 1996, prior to the banning of the Votomatic, Galvin ordered all towns using the Votomatic to take extraordinary steps to warn all their voters about the pitfalls of voting on the system. When the problems erupted in 1996, the Quincy, Massachusetts Patriot Ledger conducted its own survey of statewide election statistics that demonstrated the Votomatic produces up to 3.5 times more invalidated votes than other voting systems.

90. In 1996 special elections for the U.S. House of Representatives ordered by a federal court in Texas, the use of the Votomatic in Houston and Dallas caused the invalidation of over 40,000 votes. In the Houston race, over 23,000 undervotes and over 12,000 overvotes were reported in a race in which a runoff was avoided by only 200 votes. In Dallas, over 10,000 overvotes were reported.

91. In 1997, a Tucson, Arizona election for Ward 6 City Council between Republican Fred Ronstadt and Democrat Alison Hughes resulted in a recount because an estimated 9,000 ballots were not properly recorded by the tabulating machines. In the election, the Votomatic failed to detect the votes of nearly 18,000 Tucson voters - 20 percent of those casting ballots - in Ronstadt's 1,000-vote win over Hughes. On approximately 9,000 ballots, the stylus failed to dislodge the chad. A combination of things--paper stock that perhaps was over-bleached and ended up more brittle than usual, combined with voting machines that were worn more in the area of the council races than elsewhere--was thought to have caused the problem.

92. Hillsborough County, Florida officials inspected ballots from 95 of the County's 208 precincts after a 1998 election, and ended up tallying 2000 votes that card readers missed. The problem was due to chad. In many cases, the chad did not break free and leave a clean hole

for the computer to register the vote. Either it hung there, perhaps to be folded back into place when the ballots were stacked, or it registered a slight impression.

93. In the year 2000 presidential election, these same well-known problems with the Votomatic plagued the now-infamous statewide race for Florida's key 25 electoral votes in the presidential election. Across the state of Florida, nearly four percent of Votomatic ballots were invalidated. By contrast, the rate of error under the more modern optical scan systems was only 1.43 percent. In other words, the Votomatic causes approximately 250 more nonvotes per 1000 than optical-scan systems. The Defendants' authorization and use of the Votomatic caused a massive disenfranchisement of Florida voters that contributed to a lengthy and acrimonious process affecting the entire nation. In one of the myriad court decisions issued as a result of the Votomatic's massive disenfranchisement of Florida voters, the United States Supreme Court concluded that "[t]his case has shown that punch card balloting machines can produce an unfortunate number of ballots which are not punched in a clean, complete way by the voter." Gore v. Bush, 121 S. Ct. 525, 529 (2000).

94. In November, 2000, Wisconsin election officials voted unanimously to revoke the approval of punch-card balloting systems based on the Florida election controversy that erupted over the selection of the President. Election Board member David Halbrook stated, "our opinion was that they were not reliable, we knew all along they could produce the kinds of results that emerged in Florida."

95. In spite of this extraordinary history of disenfranchising voters and severely injuring the democratic process, Defendants continue to design, market, advertise, promote,

manufacture, service, sell, and/or distribute their Votomatic products and services to thousands of municipalities and counties nationwide and will continue to do so absent court action.

CLASS ALLEGATIONS

Plaintiffs bring this case on behalf of themselves and all other persons similarly situated as a class action pursuant to Section 5/2-801, *et seq.*, of the Illinois Code of Civil Procedure.

96. The Votomatic was used in over 500 counties in 28 states in the 2000 elections. The voters in these counties comprise approximately 29 percent of all registered voters in the United States in the year 2000. There were over 141,850,000 registered voters in the United States in 1998, the latest year for which the Federal Elections Commission has supplied this data. The Class thus consists of approximately 41 million registered voters located in over 500 (29 percent of 141,850,000 registered voters) across the country. Alternatively, counting only those persons who in fact regularly exercise the franchise, the Class consists of over 21 million registered voters (29 percent of the reported turnout in the 1998 elections of over 73,117,000). The joinder of all such persons is impracticable.

97. Common questions of law or fact predominate over any question affecting only individual members of the class. Common questions include, but are not limited to:

- a) Whether the Votomatic has defects that disenfranchise voters;
- b) Whether Defendants know of the Votomatic's defects;
- c) Whether Defendants continue to design, market, advertise, promote, manufacture, serve, sell, and/or distribute their services and/or products for use in the Votomatic system;

- d) Whether Defendants ES&S and/or Sequoia are state actors for purposes of 42 U.S.C. § 1983;
- e) Whether Defendants ES&S and/or Sequoia violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution;
- f) Whether any or all Defendants violated unfair and deceptive trade practice statutes or unfair competition common law by their actions or omissions with respect to the Votomatic.;
- g) Whether the Plaintiffs and the Class are entitled to declaratory relief;
- h) Whether the Plaintiffs and the Class are entitled to injunctive relief.
- i) Whether the Plaintiffs and the Class are entitled to a reasonable award of attorneys' fees, and costs of suit.

98. Plaintiffs can and will adequately represent and protect the interests of the Class and have no interest that conflicts with or is antagonistic to the interests of Class members. Plaintiffs have retained attorneys competent and experienced in class actions, including class actions alleging civil rights claims, constitutional claims, and defective product claims. No conflict exists between Plaintiffs and Class members. As registered voters seeking to protect their right to vote and prevent legal violations resulting from Defendants' actions relating to the Votomatic, Plaintiffs and Class members are identically situated with respect to the claims alleged herein. Plaintiffs and their attorneys have adequate resources, experience and commitment to litigate this matter.

99. A class action is appropriate for the fair and efficient adjudication of the controversy.

100. Accordingly, Plaintiffs bring this action on behalf of themselves and all members of the Class, defined as follows:

All persons lawfully registered to vote at the time of class certification in all jurisdictions in the United States that use the Votomatic for the conduct of public elections and referenda.

Excluded from the class are the Defendants' officers, employees, agents and attorneys, and any Judge or judicial officer who may hear any aspect of this case (and his or her law clerks).

CAUSES OF ACTION

COUNT ONE - Election Systems & Software, Inc.

(Violation of Consumer Protection Statutes and/or Unfair Competition Common Law)

101. ES&S has and is engaging in unfair competition or unfair and deceptive acts or practices in violation of the Nebraska Uniform Deceptive Trade Practices Act, R.R.S. Neb. §§ 87-301 - 303.10 (and/or in violation of other state consumer protection statutes) and/or in violation of unfair competition common law. ES&S has made, continues to make, and will in the future make deceptive representations in connection with goods or services. ES&S also has made, continues to make and will in the future make representations that goods or services have characteristics, uses, and/or benefits, that they do not have.

102. Specifically, ES&S represents that the Votomatic system is a sufficient system for the accurate counting of votes when in fact it is not sufficient or accurate and routinely fails to count large numbers of votes. Alternatively, ES&S makes material omissions that are deceptive and unfair by failing to inform customers of the defects in the Votomatic system. ES&S makes

these representations and omissions in connection its election management services and with its broad array of goods and services relating to the Votomatic system.

103. ES&S knows that Plaintiffs and the Class will vote on the Votomatic system as a result of its deceptive representations and/or omissions and that their votes will not be accurately counted.

104. To this day, ES&S continues to engage in unlawful practices in violation of said consumer protection statute(s) and/or unfair competition common law by continuing the above conduct and by concealing and denying the defective nature of the Votomatic system.

105. As a direct and proximate cause of ES&S' unfair methods of competition and unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages, and are threatened with irreparable harm, by way of their disenfranchisement by the Votomatic system.

106. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against ES&S in the form of declaratory relief declaring that ES&S has violated statutory unfair and deceptive trade practice law and/or common law unfair competition law and for injunctive relief in the form of a decree prohibiting ES&S from selling, distributing, marketing, advertizing, manufacturing, and/or servicing its products and/or services for use in the Votomatic system and ordering ES&S to recall all Votomatic products. Plaintiffs also demand judgment against ES&S for attorneys fees, interest and costs.

COUNT TWO - Election Systems & Software, Inc.

(Violation of Equal Protection and Due Process; 42 U.S.C. §§ 1983, 1988)

107. Because ES&S performs a public function that has traditionally been the exclusive province of the state, ES&S is a state actor in the states in which it manages elections and designs, markets, advertises, promotes, manufactures, services, sells and/or distributes products and services for the Votomatic system.

108. ES&S has and is violating the Plaintiffs' rights and those of the Class to Equal Protection and Due Process guaranteed by the United States Constitution by its election management activities relating to the Votomatic system. By operating election management services using the Votomatic system with its well-known defects, ES&S has deprived and will continue to deprive the Plaintiffs and the Class of their constitutionally-protected right to vote. The deprivation of the right to vote is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Moreover, the inherent defects in the Votomatic system render accurate recounting of votes an impossibility, resulting in further violation of Plaintiffs equal protection rights and of Plaintiffs' due process rights.

109. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment pursuant to 42 U.S.C. § 1983 against ES&S in the form of declaratory relief declaring that ES&S has violated the Equal Protection and Due Process Clauses of the United States Constitution and for injunctive relief in the form of a decree prohibiting ES&S from conducting election management services with the Votomatic system. Plaintiffs also demand judgment against ES&S for attorneys fees, interest and costs pursuant to 42 U.S.C. § 1988.

COUNT THREE - Sequoia Pacific Systems

(Violation of Consumer Protection Statutes and/or Unfair Competition Common Law)

110. Sequoia has and is engaging in unfair competition or unfair and deceptive acts or practices in violation of the California Unfair Competition Act, Cal. Bus. & Prof. Code §§ 17200 - 17210 & 17500 - 17581 (and/or in violation of other state consumer protection statutes) and/or in violation of unfair competition common law. Sequoia has engaged in unfair competition, continues to do so and will in the future engage in unfair competition. Sequoia's unfair competition includes:

- a. representing that its Votomatic products and services have characteristics, uses, and/or benefits, that they do not have;
- b. representing that its Votomatic products and services are of a particular standard, quality or grade when they are of another; and
- c. advertising its Votomatic products and services with the intent not to sell them as advertised.

111. Sequoia represents that the Votomatic system is a sufficient system for the accurate counting of votes when in fact it is not sufficient or accurate and routinely fails accurately to count votes. Alternatively, Sequoia makes material omissions that constitute unfair competition or unfair or deceptive acts or practices by failing to inform its customers of the defects in the Votomatic system. Sequoia makes these representations and omissions in connection with its election management services and with its broad array of goods and services relating to the Votomatic system.

112. Sequoia knows that Plaintiffs and members of the Class will vote on the Votomatic system as a result of its deceptive representations and/or omissions and that their votes will not be accurately counted.

113. To this day, Sequoia continues to engage in unlawful practices in violation of said unfair competition statute(s) and/or unfair competition common law by continuing the above conduct and by concealing and denying the defective nature of the Votomatic system.

114. As a direct and proximate cause of Sequoia's unfair methods of competition and unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages, and are threatened with irreparable harm, by way of their disenfranchisement by the Votomatic system.

115. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Sequoia in the form of declaratory relief declaring that Sequoia has violated consumer protection law and/or common law unfair competition law and for injunctive relief in the form of a decree prohibiting Sequoia from selling, distributing, marketing, advertizing, manufacturing, and/or servicing its products and/or services for use in the Votomatic system and ordering Sequoia to recall all Votomatic products. Plaintiffs also demand judgment against Sequoia for attorneys fees, interest and costs.

COUNT FOUR - Sequoia Pacific Systems

(Violation of Equal Protection and Due Process; 42 U.S.C. §§ 1983, 1988)

116. Because Sequoia performs a public function that has traditionally been the exclusive province of the state, Sequoia is a state actor in the states in which it manages elections

and designs, markets, advertises, promotes, manufactures, services, sells and/or distributes products and services for the Votomatic system.

117. Sequoia has and is violating the Plaintiffs' rights and those of the Class to Equal Protection and Due Process guaranteed by the United States Constitution by its election management activities relating to the Votomatic system. By operating election management services using the Votomatic system with its well-known defects, Sequoia has deprived and will continue to deprive the Plaintiffs and the Class of their constitutionally-protected right to vote. The deprivation of the right to vote is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Moreover, the inherent defects in the Votomatic system render accurate recounting of votes an impossibility, resulting in further violation of Plaintiffs equal protection rights and of Plaintiffs' due process rights.

118. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment pursuant to 42 U.S.C. § 1983 against Sequoia in the form of declaratory relief declaring that Sequoia has violated the Equal Protection and Due Process Clauses of the United States Constitution and for injunctive relief in the form of a decree prohibiting Sequoia from conducting election management with the Votomatic system. Plaintiffs also demand judgment against Sequoia for attorneys fees, interest and costs pursuant to 42 U.S.C. § 1988.

COUNT FIVE - Fidler and Chambers

(Violation of Deceptive Trade Practices Statutes and/or Unfair Competition Common Law)

119. Fidler has and is engaging in unfair competition or unfair and deceptive acts or practices in violation of the Illinois Uniform Deceptive Trade Practices statute, 815 ILCS §

510/1 -510/7 (and/or in violation of other state consumer protection statutes) and/or in violation of unfair competition common law. Fidler has engaged in deceptive trade practices, continues to do so and will in the future engage deceptive trade practices. Fidler's deceptive trade practices include:

- a. representing that its Votomatic products and services have characteristics, uses, and/or benefits, that they do not have;
- b. representing that its Votomatic products and services are of a particular standard, quality or grade when they are of another; and
- c. advertising its Votomatic products and services with the intent not to sell them as advertised.

120. Fidler represents that the Votomatic system is a sufficient system for the accurate counting of votes when in fact it is not sufficient or accurate and routinely fails accurately to count votes. Alternatively, Fidler makes material omissions that constitute unfair competition or deceptive acts or practices by failing to inform its customers of the defects in the Votomatic system. Fidler makes these representations and omissions in connection with its election management services and with its broad array of goods and services relating to the Votomatic system.

121. Fidler knows that Plaintiffs and members of the Class will vote on the Votomatic system as a result of its deceptive representations and/or omissions and that their votes will not be accurately counted.

122. To this day, Fidler continues to engage in unlawful practices in violation of said unfair competition statute(s) and/or unfair competition common law by continuing the above conduct and by concealing and denying the defective nature of the Votomatic system.

123. As a direct and proximate cause of Fidler's unfair methods of competition and unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages, and are threatened with irreparable harm, by way of their disenfranchisement by the Votomatic system.

124. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Fidler in the form of declaratory relief declaring that Fidler has violated consumer protection law and/or common law unfair competition law and for injunctive relief in the form of a decree prohibiting Fidler from selling, distributing, marketing, advertizing, manufacturing, and/or servicing its products and/or services for use in the Votomatic system and ordering Fidler to recall all Votomatic products. Plaintiffs also demand judgment against Fidler for attorneys fees, interest and costs.

COUNT SIX - Fidler Doubleday, Inc.

(Violation of Consumer Fraud and Deceptive Business Practices Act)

125. Fidler has and is engaging in unfair competition or unfair and deceptive acts or practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 -505/12 (and/or in violation of other state consumer protection statutes) and/or in violation of unfair competition common law. Fidler has engaged in unfair methods of competition and unfair or deceptive acts or practices, continues to do so and will in the future

engage in unfair methods of competition and unfair or deceptive acts or practices. Fidler's unfair and deceptive acts or practices include:

- a. representing that its Votomatic products and services have characteristics, uses, and/or benefits, that they do not have;
- b. representing that its Votomatic products and services are of a particular standard, quality or grade when they are of another; and
- c. advertising its Votomatic products and services with the intent not to sell them as advertised.

126. Fidler represents that the Votomatic system is a sufficient system for the accurate counting of votes when in fact it is not sufficient or accurate and routinely fails accurately to count votes. Alternatively, Fidler makes material omissions that constitute unfair competition or unfair or deceptive acts or practices by failing to inform its customers and the general public of the defects in the Votomatic system. Fidler makes these representations and omissions in connection with its election management services and with its broad array of goods and services relating to the Votomatic system.

127. Fidler knows that Plaintiffs and members of the Class will vote on the Votomatic system as a result of its deceptive representations and/or omissions and that their votes will not be accurately counted.

128. To this day, Fidler continues to engage in unlawful practices in violation of said unfair competition statute(s) and/or unfair competition common law by continuing the above conduct and by concealing and denying the defective nature of the Votomatic system.

129. As a direct and proximate cause of Fidler's unfair methods of competition and unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages, and are threatened with irreparable harm, by way of their disenfranchisement by the Votomatic system.

130. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Fidler in the form of declaratory relief declaring that Fidler has violated consumer protection law and/or common law unfair competition law and for injunctive relief in the form of a decree prohibiting Fidler from selling, distributing, marketing, advertising, manufacturing, and/or servicing its products and/or services for use in the Votomatic system and ordering Fidler to recall all Votomatic products. Plaintiffs also demand judgment against Fidler for attorneys fees, interest and costs.

COUNT SEVEN - Melbourne Technical Services, Inc.
(Violation of Deceptive and Unfair Trade Practices Statutes
and/or Unfair Competition Common Law)

131. Melbourne has and is engaging in unfair competition or unfair and deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 - 501.213 (and/or in violation of other state consumer protection statutes) and/or in violation of unfair competition common law. Melbourne has engaged unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce. Melbourne's unfair, unconscionable, or deceptive acts or practices include:

- a. representing that its Votomatic products and services have characteristics, uses, and/or benefits, that they do not have;

- b. representing that its Votomatic products and services are of a particular standard, quality or grade when they are of another; and
- c. advertising its Votomatic products and services with the intent not to sell them as advertised.

132. Melbourne represents that the Votomatic system is a sufficient system for the accurate counting of votes when in fact it is not sufficient or accurate and routinely fails accurately to count votes. Alternatively, Melbourne makes material omissions that constitute unfair competition by failing to inform its customers and the general public of the defects in the Votomatic system. Melbourne makes these representations and omissions in connection with its card reader maintenance and repair relating to the Votomatic system.

133. Melbourne knows that Plaintiffs and members of the Class will vote on the Votomatic system as a result of its deceptive representations and/or omissions and that their votes will not be accurately counted.

134. To this day, Melbourne continues to engage in unlawful practices in violation of said unfair competition statute(s) and/or unfair competition common law by continuing the above conduct and by concealing and denying the defective nature of the Votomatic system.

135. As a direct and proximate cause of Melbourne's unfair methods of competition and unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual damages, and are threatened with irreparable harm, by way of their disenfranchisement by the Votomatic system.

136. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Melbourne in the form of declaratory relief declaring that

Melbourne has violated consumer protection law and/or common law unfair competition law and for injunctive relief in the form of a decree prohibiting Melbourne from selling, distributing, marketing, advertising, manufacturing, and/or servicing its products and/or services for use in the Votomatic system. Plaintiffs also demand judgment against Melbourne for attorneys fees, interest and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court certify the class, and appropriate subclasses, if any, as described herein. Further, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief pursuant to each cause of action set forth in this Complaint against each and every Defendant in the form of declaratory relief, declaring that Defendants have violated applicable law and for injunctive relief in the form of a decree prohibiting Defendants from selling, distributing, marketing, advertising, manufacturing, and/or servicing products and/or services for use in the Votomatic system. Plaintiffs also demand judgment against Defendants for attorneys' fees, interest and costs.

Dated: January 9, 2001

By: _____

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