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6 DIEBOLD, INCORPORATED, AND DIEBOLD
ELECTION SYSTEMS, INC.
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA / SAN JOSE
10

11 **ONLINE POLICY GROUP, NELSON
CHU PAVLOSKY, and LUKE
12 THOMAS SMITH,**

13 **Plaintiffs,**

14 **v.**

15 **DIEBOLD, INCORPORATED, and
16 DIEBOLD ELECTION SYSTEMS,
INC.,**

17 **Defendants.**
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Case No. 03-4913JF

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

FILED CONCURRENTLY WITH:

- (1) DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT;
- (2) DECLARATION OF ADAM SAND IN SUPPORT OF DIEBOLD'S MOTION FOR SUMMARY JUDGMENT; AND
- (3) [PROPOSED] ORDER.

Hearing Date: February 9, 2004
Time: 9:00 a.m.
Courtroom: 3

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TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday, February 9, 2004 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 3 of the above-entitled court, located at 280 South 1st Street, San Jose, California, defendants Diebold, Incorporated and Diebold Election Systems, Inc. will and hereby do respectfully move this Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment in favor of defendants and against plaintiffs Online Policy Group, Nelson Chu Pavlosky and Luke Thomas Smith.

This motion is made on the grounds that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law, and that plaintiff's claims are moot.

This motion is based on this Notice of Motion and Motion, the concurrently-filed Memorandum in Support of Motion, Declaration of Adam Sand in Support of the Motion, the [Proposed] Order, the pleadings and papers on file in this action, and on such other and further evidence as may be presented prior to, and at, the hearing on this motion.

Dated: January 12, 2004

JONES DAY

By: _____
Robert A. Mittelstaedt

Attorneys for Defendant
DIEBOLD, INCORPORATED, AND
DIEBOLD ELECTION SYSTEMS, INC.