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Attorneys for Plaintiffs SHERMAN LEWIS,
ROY NAKADEGAWA, and
TRANSPORTATION SOLUTIONS
DEFENSE AND EDUCATION FUND

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

SHERMAN LEWIS, an individual, ROY
NAKADEGAWA , an individual, and
TRANSPORTATION SOLUTIONS DEFENSE
AND EDUCATION FUND, a California non-
profit public benefit corporation,

Plaintiffs,

vs.

METROPOLITAN TRANSPORTATION
COMMISSION, et al.

Defendants.

NO.

DECLARATION OF DAVID
SCHONBRUNN IN SUPPORT
OF PLAINTIFFS' REQUEST FOR
A TEMPORARY RESTRAINING
ORDER AND OSC RE
PRELIMINARY INJUNCTION

Unlimited Jurisdiction

Date: February 26, 2009

Time: 11:00 A.M.

Dept: 31

I, David Schonbrunn, hereby declare as follows:

1. I am an adult resident of the County of Marin, State of California, and if called upon in court, I could competently testify to the following facts.

2. I am President of Transportation Solutions Defense and Education Fund ("TRANSDEF"), a California non-profit public benefit corporation.

3. Within the year preceding my signing of this declaration, I have paid tolls to use the San Francisco-Oakland Bay Bridge and the Richmond-San Rafael

Bridge. Tolls incurred in the course of my duties for TRANSDEF are reimbursed to me by TRANSDEF. TRANSDEF reimburses me for parking fees in Alameda County, and for gasoline purchased there, upon which I believe Measure B sales taxes are levied.

4. On January 14, 2009, I attended a public meeting of the Programming and Allocations Committee of the Metropolitan Transportation Commission (“MTC”). Agenda Item Number 5b for that meeting pertained, in part, to the taking of public comment regarding the MTC’s proposal to transfer \$91 million from the Dumbarton Rail Corridor Project to the BART Warm Springs Extension Project. A true copy of that meeting agenda is attached hereto as Exhibit “A” and incorporated herein by reference. A true copy of the staff report and its attached proposed MTC Resolution No. 3801, Revised, that was a part of that agenda packet for that meeting is attached hereto as Exhibit “B” and incorporated herein by reference. All of these documents are also posted on MTC’s website, mtc.ca.gov.

5. On page 2 of the staff report, a copy of which is attached hereto as Exhibit “B”, it states, in pertinent part:

“Regional Measure 2 Program Amendment

In accordance with the provisions in California Streets and Highways Code Section 30914 (f), the Commission has the authority to hold a public hearing to reassign RM2 funds if a project is cancelled, cannot continue as scoped, or can be completed using other non-toll funds. Staff proposes to exercise this authority to reassign funds on two sets of projects as included in the proposed revision to Resolution 3801:

- 1) Reassign \$91 million in RM2 funding from the Dumbarton Rail project to the BART Warm Springs Extension project, ...

...

The proposal and project information was released for a public review and comment period beginning on December 17, 2008, and is scheduled to end at 4 pm on January 16th. A public hearing on the documents will be held at the Programming and Allocations Committee meeting on January 14th. The final proposal will be presented for approval at the January 28, 2009 Commission meeting.” (Emphasis added.)

6. On January 15, 2009, I submitted written comments to the MTC objecting to its proposed reassignment of the Dumbarton Rail project RM2 funds, a true copy of which is attached hereto as Exhibit “C” and incorporated herein by reference.

7. On January 28, 2009, I attended a public meeting of the MTC. Agenda Item Number 8a for that meeting pertained, in part, to its proposed approval of MTC Resolution No. 3801, Revised. A true copy of that meeting agenda is attached hereto as Exhibit “D” and incorporated herein by reference. The version of the proposed MTC Resolution No. 3801, Revised, attached to that agenda item was the same as the version presented in the staff report for the January 14, 2009 meeting, a copy of which is attached hereto as Exhibit “B”. A copy of the staff memorandum “Public Hearing Comments Related to the Proposed Reassignment of RM2 Funds” (and the Attachment A referred to therein) that was also part of that agenda report is attached hereto as Exhibit “E” and incorporated herein by reference. All of these documents are also posted on MTC’s website, mtc.ca.gov. In my public testimony, I put the Commission on notice that TRANSDEF believes the proposed action would constitute an illegal expenditure of public funds subject to the remedies set forth in C.C.P. Section 526a.

8. Any funds transferred from the Dumbarton Rail Corridor Project now will result in a delay in its construction, with the attendant increase in construction costs due to that delay. When the \$91 million is eventually repaid to the Dumbarton Rail Corridor Project sometime between 2019 and 2027 under the terms set by MTC, these funds will have lost substantial purchasing power, as they will not be escalated to compensate for inflation.

9. MTC has previously identified the need for additional transbay capacity to meet projected growth. The BART Warm Springs Extension Project will not increase the existing capacity of BART’s transbay tube for transporting people from one side of the San Francisco

Bay to the other. I testified before the MTC that the Dumbarton Rail Corridor Project was the most cost-effective way to increase transbay capacity, and that the project was an essential part of building a conventional rail network, which will have huge synergistic effects.

10. On January 22, 2009, I delivered a letter to the Alameda County Transportation Improvement Authority (“ACTIA”), a true copy of which is attached hereto as Exhibit “F” and incorporated herein by reference. In that letter, I warned ACTIA that the Santa Clara County Valley Transportation Authority (“VTA”) did not have assured funding for the BART rail connection to Santa Clara County, and had not even submitted an application for federal New Starts funding for the project.

11. Agenda Item #CC1C for the February 26, 2009 ACTIA board meeting includes a proposal for that Authority to approve a finding that full funding for the BART rail connection into Santa Clara County is “assured”. With such a finding, ACTIA will be entitled to release monies collected pursuant to a voter-approved sales tax increase (“Measure B”) to be used on the BART Warm Springs Extension Project. A true copy of the agenda report for that item is attached hereto as Exhibit “G” and is incorporated herein by reference. In that agenda report, ACTIA states that the \$91 million in RM-2 funds being taken from the Dumbarton Rail Corridor Project “will be advanced” to be used for the BART Warm Springs Extension Project. That same staff report states that BART has already advertised the construction contract for the first phase of the Warm Springs Extension Project, and that the actions discussed in that report are necessary for BART to award that construction contract. This agenda report is also posted on ACTIA’s website at www.acta2002.com.

12. Enjoining the expenditure now of the RM2 and Measure B funds that have been improperly transferred and committed to the Warm Springs Extension Project will prevent the execution of contracts now that will have to be rescinded at a later date. In addition, enjoining the illegal expenditures of the funds will prevent damage to the public’s trust in these agencies and programs, both of which received their funding from voter-approved ballot measures that contain provisions that are now being violated.

13. A true copy of the text of Measure B as it was included in the ballot materials used when it was approved by the voters in 2000 is attached hereto as Exhibit "H" and is incorporated herein by reference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this declaration on February 25, 2009, at Sausalito, California.

DAVID SCHONBRUNN