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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
11

12 **JOHN TOS, QUENTIN KOPP, TOWN OF**
ATHERTON, a municipal corporation,
13 **COUNTY OF KINGS, a subdivision of the**
State of California, MORRIS BROWN,
14 **PATRICIA LOUISE HOGAN-GIORNI,**
ANTHONY WYNNE, COMMUNITY
15 **COALITION ON HIGH-SPEED RAIL, a**
California nonprofit corporation,
16 **TRANSPORTATION SOLUTIONS**
DEFENSE AND EDUCATION FUND, a
17 **California nonprofit corporation, and**
CALIFORNIA RAIL FOUNDATION, a
18 **California nonprofit corporation,**

19 Petitioners,

20 v.

21 **CALIFORNIA HIGH SPEED RAIL**
AUTHORITY, a public entity, BOARD OF
22 **DIRECTORS OF THE CALIFORNIA**
23 **HIGH-SPEED RAIL AUTHORITY, and**
24 **DOES 1-20 inclusive,**

25 Respondents.

Case No. 34-2016-00204740

**DEFENDANTS' NOTICE OF HEARING,
DEMURRER AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 18, 2017
Time: 9:00 a.m.
Dept: 54
Judge: Raymond M. Cadei
Trial Date: None set
Action Filed: December 13, 2017

Reservation No. 2232493

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NOTICE OF HEARING

TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 18, 2015, at 9:00 a.m. or as soon thereafter as the matter may be heard, in Department 54 of the Sacramento County Superior Courthouse, located at 800 9th Street, Sacramento, California, Defendant the California High-Speed Rail Authority (the Authority)¹ will demur to the First Amended Verified Complaint for Declaratory and Injunctive Relief ("FAC").

This demurrer is brought on the grounds that the allegations of the Second Cause of Action of the FAC fail to state facts sufficient to constitute a cause of action. A challenge to the Authority's administrative decisions must be brought in a mandamus action, not in a civil action as pleaded here. However pleaded, plaintiffs' Second Cause of Action is not ripe because the facts alleged in the Complaint reflect that there was no final administrative decision to review. Similarly, the First Cause of Action fails to state facts sufficient to constitute a cause of action because it, too, is unripe. Concurrently with this demurrer, the Authority has filed an alternative motion to strike.

This demurrer will be based on this notice of hearing, the demurrer, the accompanying memorandum of points and authorities and request for judicial notice, and the pleadings, records, and files in this action.

Pursuant to Local Rule 1.06 (A) the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the


¹ Plaintiffs have named as defendants the Authority and the "Board of Directors of the High-Speed Rail Authority." They are one and the same. The High-Speed Rail Act provides that the Authority "is composed of nine members. (Pub. Util. Code, § 185020, subs. (a), (b)(1).) The nine members of the Authority are commonly referred to as members of the board.

1 hearing and receive the tentative ruling. If you do not call the court and the opposing party by
2 4:00 p.m. the court day before the hearing, no hearing will be held.

3
4 Dated: March 15, 2017

Respectfully Submitted,

5 XAVIER BECERRA
6 Attorney General of California
7 TAMAR PACHTER
8 Supervising Deputy Attorney General

9 
10 SHARON L. O'GRADY
11 Deputy Attorney General
12 *Attorneys for Respondents*
13 *California High-Speed Rail Authority*

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1 **DEMURRER**

2 Defendant demurs to the Complaint and each cause of action contained therein on the
3 grounds that:

4 1. The Second Cause of Action, relating to the Authority's funding plans, fails to state
5 facts sufficient to constitute a cause of action under Code of Civil Procedure section 430.10,
6 subdivision (e), in that any challenge to the Authority's funding plans must be brought via a
7 petition for writ of mandamus, not a civil complaint, as plaintiffs have done.

8 2. The Second Cause of Action also fails to state facts sufficient to constitute a cause of
9 action under Code of Civil Procedure section 430.10, subdivision (e), in that the facts alleged
10 establish that the claim is not ripe.

11 3. The First Cause of Action fails to state facts sufficient to constitute a cause of action
12 under Code of Civil Procedure section 430.10, subdivision (e), in that the facts alleged establish
13 that the claim is not ripe.


14 WHEREFORE, Defendant the California High-Speed Rail Authority prays:

- 15 1. That the demurrer be sustained without leave to amend.
16 2. For such other and further relief as the Court deems proper.

17 Dated: March 15, 2017

Respectfully Submitted,

18
19 XAVIER BECERRA
Attorney General of California
20 TAMAR PACHTER
Supervising Deputy Attorney General

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23 SHARON L. O'GRADY
Deputy Attorney General
24 *Attorneys for Respondents*
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

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This action challenges administrative decisions of the California High-Speed Rail Authority committing bond funds to construct two segments of the high-speed rail system. The action also challenges the constitutionality of a statute that clarifies a provision of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. The First Amended Complaint (“FAC”) suffers from fundamental flaws. The Second Cause of Action fails to state a cause of action because the Authority’s administrative decisions may only be challenged in a writ proceeding, not in the civil action plaintiffs have filed. The Second Cause of Action also fails because the allegations of the FAC disclose that there is no final administrative determination to review, and therefore the claim is not ripe and cannot properly be reviewed, however pleaded. Similarly, the First Cause of Action, which is a facial challenge to a statute, also does not present an actual controversy ripe for judicial review. A difference of opinion as to the validity of a statute is not by itself sufficient to constitute an actual controversy between the parties, and a judicial declaration is not necessary under the circumstances. Consequently, this Court should sustain the demurrer.

BACKGROUND

I. THE SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY.

In 2008, California voters passed Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. (Stats. 2008, ch. 267, § 9 [Proposition 1A (Assem. Bill. No. 3034 (2007-2008 Reg. Sess.) AB 3034], § 9, codified at Sts. & Hy. Code, § 2704 et seq. (hereafter, the “Bond Act”).)² The Bond Act authorized construction of a high-speed rail system in California. The Bond Act, which authorized the sale of \$9 billion in general obligation bonds, was not intended to fund construction of the entire high-speed rail system, but to provide an initial

² Hereafter, all statutory cites are to the Streets and Highways Code, unless otherwise indicated.

1 investment in the early stages of the largest public works project in state history, and required the
2 Authority to obtain funding from sources other than state bonds. (§§ 2704.04, subds. (a)-(c);
3 2704.08, subd. (a).)

4 The Bond Act permits the Authority to use the proceeds of the sale of general obligation
5 bonds (bond funds) for capital costs (§ 2704.04, subd. (b)(1)(B)) associated with the development
6 of the high-speed train system, "or any portion thereof." (§ 2704.04, subd. (c).) The Bond Act
7 envisions that the high-speed train system will be built over time, and that funding plans for
8 system development will be in increments. (See §§ 2704.04, subd. (a); 2704.01, subds. (f) and (g);
9 2704.08, subds. (c) and (d).)

10 Under the Bond Act, the Authority generally lacks unilateral authority to spend bond funds
11 for construction or real property acquisition. A series of conditions must be satisfied before the
12 Authority can commit bond funds for these purposes. (§ 2704.08, subds. (c) and (d).) Before the
13 Authority can even request an appropriation of bond funds, it must submit to the Legislature a
14 preliminary funding plan, the requirements for which are set forth in section 2704.08,
15 subdivision (c). Once an appropriation is made, but before the Authority can spend the
16 appropriated bond funds, it must approve a second, more detailed funding plan. (§ 2704.08,
17 subd. (d)(1).) An independent consultant must then review the second funding plan and issue a
18 report indicating that if construction is completed as proposed, "the corridor or usable segment
19 thereof would be suitable and ready for high-speed train operation." (§ 2704.08, subd. (d)(2)(B).)
20 The second funding plan and consultant report are then submitted to the Director of Finance and
21 the Chairperson of the Joint Legislative Budget Committee for review. (§ 2704.08, subd. (d)(1)
22 and (d)(2).) If, after receiving any communication from the Joint Legislative Budget Committee,
23 the Director of Finance finds that the plan is likely to be successfully implemented as proposed in
24 the funding plan, then and only then may the Authority commit bond funds for capital costs.
25 (§ 2704.08, subd. (d).)

26 In 2012, the Legislature passed Senate Bill No. 1029 (Reg. Sess. 2011-2012), which
27 appropriated bond funds for the high-speed rail project, including funds for construction of a
28 segment in the Central Valley, and for passenger rail projects in the "bookends," i.e., the San

1 Francisco Peninsula and the Los Angeles Metropolitan Area. (Stats. 2012, ch. 152; West's Ann.
2 Sts. & Hy. Code – 2016 Supp., Vol. 63A, pp. 74-84.) Senate Bill No. 557 (2013-2014 Reg.
3 Sess.), effective January 1, 2014, allocated \$500 million in bond funds for the San Francisco
4 Peninsula segment.

5 Assembly Bill No. 1889 (2015-2016 Reg. Sess.) (hereafter, "AB 1889") clarifies the Bond
6 Act requirement that, on completion, a project approved under section 2704.08, subdivision (d) be
7 "suitable and ready for high-speed train operation." It provides, in part:

8 (g) It is the intent of the Legislature, in appropriating funding for initial
9 investments, that these projects should proceed to construction in the near-term to
10 provide economic benefits, create jobs, and advance improved, safer, and cleaner rail
11 transportation and that these initial investments are consistent with and further the
12 goals of Proposition 1A.

13 (h) Consistent with Proposition 1A, these early investments will enable
14 passenger train service providers to begin using the improvements on a corridor or
15 useable segment thereof while additional work is completed to enable high-speed
16 train service.

17 * * *

18 (k) *This act clarifies that early investments in the Bookends and elsewhere
19 along the system, which will ultimately be used by high-speed rail trains, are
20 consistent with the intent of the Legislature in appropriating funding and with the will
21 of the voters in approving Proposition 1A.*

22 (AB 1889, emphasis added). It added section 2704.78, which states, in part: "For purposes of the
23 funding plan required pursuant to subdivision (d) of Section 2704.08, a corridor or usable
24 segment thereof is 'suitable and ready for high-speed train operation' if the bond proceeds, as
25 appropriated pursuant to Senate Bill 1029 [], are to be used for a capital cost for a project that
26 would enable high-speed trains to operate immediately or after additional planned investments are
27 made on the corridor or useable segment thereof and passenger train service providers will benefit
28 from the project in the near-term." (*Id.*, subd. (a).)

24 II. ALLEGATIONS OF THE COMPLAINT.

25 The FAC alleges two causes of action. The First Cause of Action seeks a declaratory
26 judgment that AB 1889, which clarifies what the phrase "suitable and ready for high-speed train
27 operation" means under the Bond Act, is unconstitutional. (FAC, ¶¶ 56-61.) The Second Cause
28 of Action alleges that on December 8, 2016, the Authority released two draft funding plans

1 pursuant to section 2704.08, subdivision (d), one for a project in the Central Valley (the “Central
2 Valley Funding Plan”) and one for a project on the San Francisco Peninsula (the “Peninsula
3 Funding Plan”). (FAC, ¶¶ 48, 62.) Plaintiffs allege that the Central Valley Funding Plan and the
4 Peninsula Funding Plan only comply with the Bond Act if AB 1889 is determined to be legally
5 valid. (*Id.*, ¶¶ 51, 52, 62.) Plaintiffs further allege that, once the Central Valley Funding Plan and
6 the Peninsula Funding Plan have been approved by the Director of Finance, the Authority will
7 spend money illegally on the projects to be constructed pursuant to those plans. (*Id.*, ¶¶ 64, 66.)
8 Plaintiffs ask the Court to enjoin future expenditures, specifically:

9 2. For this Court’s temporary restraining order, preliminary injunction, and
10 permanent injunction preventing CHSRA [the Authority] from expending any public
11 funds toward the approval of a Funding Plan that relies on AB 1889 to find
12 compliance with the requirements of Prop. 1A.

13 3. For this Court’s temporary restraining order, preliminary injunction, and
14 permanent injunction preventing CHSRA from expending any Prop. 1A high-speed
15 rail construction bond funds towards the construction of any and all projects based on
16 a second Funding Plan that relies on AB 1889 to find compliance with the
17 requirements of Streets & Highways Code §2704.08(d).

18 (FAC, Prayer.) In addition, the FAC asks:

19 4. For the recovery and restoration to the California State Treasury of any
20 funds that CHSRA has illegally, improperly or wastefully spent toward the
21 preparation or approval of improper/non-compliant Funding Plans, and of any Prop.
22 1A funds illegally spent to implement or in reliance upon such improper and/or illegal
23 Funding Plans.

24 (*Ibid.*)

25 ARGUMENT

26 I. APPLICABLE LEGAL STANDARD

27 A defendant may object to a whole complaint or to any of the purported causes of action
28 within a complaint by demurrer. (Code Civ. Proc., § 430.50, subd. (a).) On demurrer, the trial
court considers the properly pled material facts and those matters that may be judicially noticed
and tests their sufficiency. (*Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150,
1158-1159.) Courts treat as true all of the complaint’s material factual allegations, but not the
contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311,
318; see *Picton v. Anderson Union High School Dist.* (1996) 50 Cal.App.4th 726, 733.) A

1 demurrer may be sustained without leave to amend where the facts are not in dispute and the
2 nature of the plaintiff's claim is clear but, under substantive law, no liability exists. (*Keyes v.*
3 *Bowen* (2010) 189 Cal.App.4th 647, 655, citing *Siedler v. Municipal Court* (1993) 12 Cal.App.
4 4th 1229, 1233.)

5 A demurrer for failure to state a cause of action may properly be sustained against a
6 complaint seeking injunctive relief. (*Berry v. American Express Publishing, Inc.* (2007) 147
7 Cal.App.4th 224, 226-227). A demurrer for failure to state a claim also may lie against a
8 complaint for declaratory relief. (*State Farm Fire and Casualty Co. v. Super. Ct.* (1987) 191
9 Cal.App.3d 74, 76-78.) A court may sustain a demurrer to a complaint for declaratory relief if the
10 court concludes that a judicial declaration is not necessary or appropriate at the time under the
11 circumstances. (*DeLaura v. Beckett* (2006) 137 Cal.App.4th 542, 545.)

12 **II. THE SECOND CAUSE OF ACTION FAILS BECAUSE PLAINTIFFS' CHALLENGE TO THE**
13 **AUTHORITY'S FUNDING PLANS CAN ONLY BE RAISED BY MANDAMUS.**

14 The Second Cause of Action is a claim for declaratory and injunctive relief that challenges
15 the Central Valley Funding Plan, the Peninsula Funding Plan, and future funding plans that the
16 Authority may approve. However, administrative decisions of a public agency may only be
17 challenged by petitioning the court for a writ of mandate compelling the Authority to set aside its
18 determination. (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1466 ("*City of*
19 *Pasadena*"); *Excelsior College v. Cal. Bd. of Registered Nursing* (2006) 136 Cal.App.4th 1218,
20 1228, fn. 2; *State v. Superior Court*, (1974) 12 Cal.3d 237, 251.) Thus, these challenges to the
21 Authority's funding plans are only properly alleged in a writ proceeding, as in an earlier action
22 brought by some of the same plaintiffs, *California High-Speed Rail Authority v. Superior Court*
23 (2014) 228 Cal.App.4th 676 ("*CHSRA*").³ In *CHSRA*, the Court reviewed the Authority's pre-
24 appropriation funding plan under the standard for writ relief, stating:

25
26
27 ³ Plaintiffs John Tos and County of Kings were plaintiffs in the trial court writ proceeding
28 at issue in *CSHRA* and were represented by the attorneys who are counsel of record for plaintiffs
in this case.

1 Four simple words resolve the issues before us: clear, present, ministerial, and
2 duty. The refrain is a familiar one. To obtain writ relief under Code of Civil
3 Procedure section 1085, a petitioner must demonstrate that the respondent has a clear,
4 present, and ministerial duty that inures to the petitioner's benefit.

4 (*Id.* at p. 707.) Plaintiffs cannot challenge these administrative decisions in a civil action.

5 (*Center for Biological Diversity v. California Department of Forestry and Fire Protection* (2014)

6 232 Cal.App.4th 931, 952, fn. 27 ["It is settled that an action for declaratory relief is not

7 appropriate to review an administrative decision," quoting *State v. Superior Court, supra*, 12

8 Cal.3d at p. 249]; *City of Pasadena, supra*, 228 Cal.App.4th at p. 1466 [same].) And claims for

9 injunctive and declaratory relief cannot be joined with writ claims. (*Id.* at p. at 1467.)

10 The fact that plaintiffs label the Second Cause of Action as brought under Code of Civil

11 Procedure section 526a does not save it. Section 526a provides standing where it otherwise

12 would not exist. (*Taxpayers for Accountable School Bond Spending v. San Diego Unified School*

13 *Dist.* (2013) 215 Cal.App.4th 1013, 1032; *Daily Journal Corp. v. City of Los Angeles* (2009) 172

14 Cal.App.4th 1550, 1557.) (*Daily Journal Corp. v. City of Los Angeles* (2009) 172 Cal.App.4th

15 1550, 1557-1558.) It cannot be used to convert what otherwise would be a mandamus

16 proceeding into a civil action. (*Nathan H. Schur, Inc. v. City of Santa Monica* (1956) 47 Cal.2d

17 11, 17-18 [holding that cause of action brought under section 526a did not convert a mandamus

18 action into a civil proceeding]; *Animal Defense Fund v. California Exposition and State Fairs*

19 (2015) 239 Cal.App.4th 1286, 1301 [concluding that a taxpayer action not an available remedy

20 where the Legislature has provided an administrative remedy]; see *Daily Journal Corp. v. City of*

21 *Los Angeles, supra*, 172 Cal.App.4th at pp. 1557-1558 [applying mandamus analysis to a section

22 526a cause of action].) To hold otherwise would require the Court to treat the claims of the

23 plaintiffs who allege that they are taxpayers (FAC, ¶¶ 4, 8), differently from the claims of the

24 Town of Atherton and the County of Kings, who do not (FAC, ¶¶ 6, 7).

25 Accordingly, the Court should sustain the demurrer to the Second Cause of Action.

1 **III. THE FIRST AND SECOND CAUSES OF ACTION SHOULD BE DISMISSED BECAUSE**
2 **THEY ARE NOT RIPE.**

3 Even if the FAC were properly alleged as a petition for mandamus, both the First and
4 Second Causes of Action would fail as a matter of law because they are premature and therefore
5 should be dismissed as unripe. California courts will decide only justiciable controversies.
6 (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) A
7 basic prerequisite to judicial review of administrative acts is the existence of a ripe controversy.
8 (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 169 (“*Pacific Legal*
9 *Foundation*”).)

10 The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from
11 issuing purely advisory opinions. (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170.) “It is
12 rooted in the fundamental concept that the proper role of the judiciary does not extend to the
13 resolution of abstract differences of legal opinion.” (*Ibid.*) The ripeness doctrine recognizes that
14 “judicial decisionmaking is best conducted in the context of an actual set of facts so that the
15 issues will be framed with sufficient definiteness to enable the court to make a decree finally
16 disposing of the controversy.” (*Ibid.*) A controversy is ripe “when it has reached, but has not
17 passed, the point that the facts have sufficiently congealed to permit an intelligent and useful
18 decision to be made.” (*Id.* at p. 171, quoting *California Water & Telephone Co. v. County of Los*
19 *Angeles* (1967) 253 Cal.App.2d 16, 22.) In determining whether a matter is ripe, California
20 courts apply a two-part test: (1) whether there is an actual controversy “appropriate for
21 immediate judicial resolution”; and (2) whether the parties will suffer hardship if the court
22 withholds consideration. (*Pacific Legal Foundation, supra*, 33 Cal.3d at pp. 171-172; *Panoche*
23 *Energy Center, LLC v. Pacific Gas and Electric Company* (2016) 1 Cal.App.5th 68, 100; accord
24 *Wilson & Wilson v. City Council of Redwood City, supra*, 191 Cal.App.4th at p. 1582.)

25 **A. The Second Cause of Action Challenging the Authority’s Funding Plans**
26 **Is Not Ripe Because Those Administrative Decisions Are Not Final.**

27 The Second Cause of Action seeks to enjoin the Authority from approving future funding
28 plans that do not yet exist, and from spending money on construction pursuant to plans that either

1 do not exist or that the FAC alleges have not yet been approved by the Director of Finance. (FAC,
2 ¶¶ 63-69 & Prayer, ¶¶ 2-3.) Plaintiffs' original Complaint, filed December 13, 2016, alleged that
3 the Central Valley Funding Plan and the Peninsula Funding Plan are not final, but are available
4 only as drafts, and further alleged that

5 The Board does not plan to give final approval to either funding plan at its December
6 13th [2016] meeting. Rather, the Board intends to authorize CHSRA's Chief
7 Executive Officer ("CEO") to finalize both Funding Plans after January 1, 2017,
when AB 1889 becomes effective, and submit them to the Director of Finance for his
consideration and approval.

8 (Complaint ¶ 60.) Thus, the allegations in the original Complaint challenging the Authority's
9 funding plans were clearly premature. (See *Lee v. Bank of America* (1994) 27 Cal.App.4th 197,
10 204-206 [holding that a lawsuit based on expectation of future conduct is premature]).

11 The FAC adds allegations of events occurring *after* the commencement of this action,
12 including that the Authority's Chief Executive Officer approved the funding plans on or about
13 January 3, 2017 and forwarded them to "the Director of Finance for his consideration and
14 possible approval." (FAC, ¶ 53.) These new allegations cannot and do not make plaintiffs' claim
15 ripe, for three reasons. First, allegations concerning events occurring after commencement of the
16 action are not the proper subject of an amended complaint, but must be asserted in a supplemental
17 complaint, which must be brought on noticed motion, not in an amended complaint filed as a
18 matter of right under Code of Civil Procedure section 472. (Code Civ. Proc., § 464, subd. (a);
19 5 Witkin, Cal. Procedure, *Pleading* (5th ed. 2008 & 2016 supp.) § 1248.) Second, even if
20 plaintiffs had complied with the motion requirements of Code of Civil Procedure section 464,
21 subdivision (a) (or the amended complaint were to be construed as a supplemental complaint), the
22 claims would not be ripe. "Ordinarily, a plaintiff's cause of action must have arisen before the
23 filing of the complaint, and he may not recover on a cause of action arising after the suit is filed."
24 (*Walton v. County of Kern* (1940) 39 Cal.App.2d 32, 34.) A supplemental complaint "adds
25 matters to the demand, it does not modify the allegations of the original pleading. *Hence if the*
26 *original complaint fails to state a claim because the right has not yet accrued, the defect cannot*
27 *be cured by a supplemental complaint."* (5 Witkin, Cal. Procedure, *Pleading, supra*, § 1250,
28 emphasis added, citing *Turney v. Shattuck* (1929) 96 Cal.App. 590, 595.) Finally, even if

1 plaintiffs' post-December 13, 2016 allegations could properly be considered, the FAC alleges that
2 the Director of Finance has not yet approved any expenditure of bond funds for either of the
3 Authority's two funding plans, and that he may not grant approval. (FAC, ¶ 53 [alleging plans
4 have been forwarded to the Director of Finance for his "possible approval"].) Absent any
5 allegation that the Director has approved the Central Valley Funding Plan or the Peninsula
6 Funding Plan, the FAC does not allege any final administrative decision to be reviewed, and
7 plaintiffs' allegations challenging the Authority's Central Valley Funding Plan and Peninsula
8 Funding Plan are not ripe.⁴ (See *Pacific Legal Foundation, supra*, 33 Cal.3d at p. 172.)

9 The Court of Appeal has specifically addressed the issue of ripeness as it relates to the
10 Authority's funding plans in *CHSRA*. (228 Cal.App.4th 676.) There, the Court emphasized that
11 the design of the high-speed rail system is continuing to evolve. (*Id.* at pp. 703-704.) It
12 concluded that "[w]e cannot and should not decide whether any future use of bond funds will
13 stray too far from the . . . purpose and parameters of the Bond Act." (*Ibid.*) In holding that the
14 plaintiffs' challenge to the Authority preliminary funding plan was not ripe, the Court explained
15 that "bond proceeds cannot be committed and construction cannot begin *until the final funding*
16 *plan is sent to the Joint Legislative Budget Committee and approved by the Director of the*
17 *Department of Finance.*" (*Id.* at p. 713, emphasis added.) The allegations of the Complaint and
18 the FAC concede that there is no such final administrative decision approved by the Director of
19 Finance that this Court may properly review. (Compl., ¶ 60; FAC, ¶¶ 53-54, 70.)

20 A demurrer should be sustained if a complaint shows on its face that a claim is not ripe.
21 (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 188 [holding that the trial
22 court properly sustained demurrer, because allegations disclosed that plaintiff's claims were not
23 ripe]; see *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 131.) Plaintiffs'
24 Second Cause of Action is not ripe, and therefore the Court should sustain the demurrer to it.

25 _____
26 ⁴ Not content with challenging the sufficiency of the Central Valley and Peninsula funding
27 plans, plaintiffs also seek relief with respect to unspecified plans that plaintiffs do not allege exist,
28 even in draft form. (FAC, ¶¶ 63, 66-67, 69 [referring to preparation, completion or approval of
funding plans generally].) Plaintiffs' allegations seeking injunctive relief with respect to plans
that plaintiffs do not allege exist in any form plainly are not ripe.

1 **B. The First Cause of Action Also Is Not Ripe.**

2 The First Cause of Action, a facial challenge to AB 1889, also is not ripe. A challenge to a
3 statute should be addressed in the context of an actual dispute. Because the FAC alleges that the
4 Director of Finance has not yet approved a funding plan, it states no facts giving rise to an actual
5 controversy.

6 The FAC seeks declaratory relief pursuant to Code of Civil Procedure section 1060 (FAC,
7 ¶ 3), which provides that “[a]ny person . . . who desires a declaration of his or her rights or duties
8 with respect to another, or in respect to . . . property . . . may, in cases of actual controversy
9 relating to the legal rights and duties of the respective parties, bring an action . . . for a
10 declaration of his rights and duties in the premises.” While the validity of a statute can be a
11 proper subject of declaratory relief, a declaratory judgment may not be rendered in disregard of
12 the customary limitations upon the granting of such relief, such as the limitation on issuing
13 advisory opinions. (*Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1355.) “The
14 controversy must be definite and concrete, touching the legal relations of parties having adverse
15 legal interests.” (*Pacific Legal Foundation, supra*, 33 Cal.3d at pp. 170-171.)

16 The only allegations in the Complaint regarding a controversy are the bare statements that
17 plaintiffs assert that AB 1889 is unconstitutional because it materially changes the requirements
18 for funding plans prepared pursuant to the Bond Act, specifically section 2704.08, and that the
19 Authority contends that AB 1889 is valid. (See FAC, ¶¶ 58-60.) Nothing else in the First Cause
20 of Action suggests that the matter is appropriate for judicial resolution or that plaintiffs cannot
21 raise their facial challenge to the statute in the context of a challenge to a specific funding plan
22 actually approved by the Director of Finance, rather than in the abstract.

23 The fact that the Authority has taken a position on the validity of AB 1889 is not enough to
24 give rise to a ripe controversy that is “definite and concrete, touching the legal relations of
25 parties having adverse legal interests.” (See *Pacific Legal Foundation, supra*, 33 Cal.3d at
26 pp. 170-171.). By law, the Authority must assume the enforceability and constitutionality of a
27 statute until and unless a Court of Appeal strikes down the law. (Cal. Const., art. III, § 3.5; see
28 *California State Teachers’ Retirement System v. County of Los Angeles* (2013) 216 Cal.App.4th

1 41, 59 fn. 8.) A difference of opinion as to the validity of a statute “is not enough by itself to
2 constitute an actual controversy” between the parties. (*Pacific Legal Foundation, supra*, 33
3 Cal.3d at p. 173.) If it were, the mere assertion of statutory invalidity would be sufficient to
4 initiate judicial proceedings, even when there is nothing concrete at stake.

5 The ripeness doctrine is intended “to prevent the courts, through avoidance of premature
6 adjudication, from entangling themselves in abstract disagreements over administrative policies,
7 and also to protect the agencies from judicial interference until an administrative decision has
8 been formalized and its effects felt in a concrete way.” (See, e.g., *Pacific Legal Foundation v.*
9 *California Coastal Com, supra*, 33 Cal.3d at p. 171, quoting *Abbott Laboratories. v. Gardner*
10 (1967) 387 U.S. 136, 148-149, disapproved on other grounds by *Califano v. Sanders* (1977) 430
11 U.S. 99.) Here, because the complaint alleges that the Director of Finance has not yet approved
12 any of the challenged funding plans, it states no facts giving rise to an actual controversy, and
13 thus falls squarely within the prohibition on issuance of advisory opinions addressed in *Pacific*
14 *Legal Foundation*. That case involved a facial challenge by the Pacific Legal Foundation to
15 public access guidelines issued by the California Coastal Commission. (*Pacific Legal*
16 *Foundation, supra*, 33 Cal.3d at p. 164.) The suit did not challenge any individual permit
17 condition. (*Ibid.*) The California Supreme Court held that the case lacked “the urgency and
18 definiteness necessary to render declaratory relief appropriate.” (*Id.* at p. 172.) It concluded that
19 courts should “not be drawn into disputes which depend for their immediacy on speculative future
20 events.” (*Id.* at p. 173, citing *Selby Realty Co. v. City of Buenaventura* (1973) 10 Cal.3d 110,
21 118.) The Court held that the plaintiffs’ claim depended upon speculation as to how the
22 guidelines might be applied by the Coastal Commission, which was not enough to make the
23 matter ripe for decision. (*Ibid.*) Here, plaintiffs are in no better position, because there is no final
24 administrative decision to review, and the claim rests on what the Director may or may not do
25 after the action was commenced. As pled in the FAC, plaintiff’s challenge to the Authority’s
26 funding plans is unripe, and how AB 1889 may be applied to those or future funding plans is
27 therefore entirely speculative.

28

1 **C. Plaintiffs Will Not Suffer Hardship If They Are Required to Bring**
2 **Their Claims in a Writ Action Challenging a Final Funding Plan**
3 **Approved by the Director of Finance.**

4 Plaintiffs also cannot meet the second prong of the ripeness test – they cannot demonstrate
5 that they will suffer hardship if they are required to bring their claims in an action challenging a
6 funding plan that has actually been approved by the Director of Finance. (See *Pacific Legal*
7 *Foundation, supra*, 33 Cal.3d at pp. 172-173 [noting that hardship from delay in court
8 consideration of validity of Coastal Commission guidelines was not imminent or significant
9 enough to compel immediate resolution of merits of plaintiffs’ claims].) Indeed, the FAC is
10 devoid of any allegations suggesting hardship.

11 **D. The Court Should Sustain the Demurrer to the First Cause of Action**
12 **Because a Judicial Declaration Is Not Necessary at This Time Under All**
13 **of the Circumstances.**

14 Under Code of Civil Procedure section 1061, a court “may sustain a demurrer without
15 leave to amend if [the court] determines that a judicial declaration ‘is not necessary or proper at
16 the time under all the circumstances.’” (*DeLaura v. Beckett, supra*, 137 Cal.App.4th at p. 545,
17 quoting Code of Civil Procedure section 1061 and *Wilson v. Transit Authority* (1962) 199
18 Cal.App.2d 716, 721.) “The trial court’s determination that a declaration is not necessary or
19 proper under the circumstances is discretionary, subject to reversal only for abuse of discretion.”
20 (*D. Cummins Corporation v. United States Fidelity and Guaranty Co.* (2016) 246 Cal.App.4th
21 1484, 1490; see *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647; *Otay Land Co. v.*
22 *Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 563.) Applying this principle, a court may
23 refuse to grant declaratory relief where a statute provides for another procedure and the court
24 concludes “that more effective relief can and should be obtained through that procedure.” (*Ibid.*,
25 quoting *Filarisky v. Superior Court* (2002) 28 Cal.4th 419, 433.) Here, plaintiffs’ facial
26 challenge to the statute may more appropriately be brought in a writ proceeding, where it can be
27 determined together with any challenge plaintiffs may bring to a funding plan approved by the
28 Director of Finance.

1 **IV. THE DEMURRER SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND.**

2 Where, as here, a plaintiff improperly files an action for declaratory and injunctive relief to
3 challenge an administrative agency decision reviewable only in a writ proceeding, the Court may
4 take one of two courses. It may dismiss the action, with or without leave to amend, or it may
5 construe plaintiffs' pleading as one seeking traditional mandamus, and proceed accordingly.
6 (*City of Pasadena, supra*, 228 Cal.App.4th at p. 1467.) Here, however, plaintiffs' causes of
7 action also are unripe, a defect that cannot be cured by amendment. Accordingly, the demurrer
8 should be sustained without leave to amend


9 **CONCLUSION**

10 The Court should sustain the Authority's demurrer without leave to amend.

11
12 Dated: March 15, 2017

Respectfully Submitted,

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17 
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DECLARATION OF SERVICE

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority**

No.: **34-2016-00204740**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter, I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 15, 2017, I served the attached **DEFENDANTS' NOTICE OF HEARING, DEMURRER AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

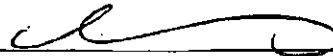
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 15, 2017, at San Francisco, California.

Susan Chiang

Declarant



Signature