(2007) 155 Cal.App.4th 736, 758.) These powers are "not confined by or dependent on statute" (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 267) and include the power to "fashion[] procedures and remedies as necessary to protect litigants' rights," even in the absence of specific statutory authority. (*Stephen Slesinger, Inc.,* at 762.)

In light of the foregoing, this Court will now request that the Presiding Judge of the Sacramento County Superior Court issue an order (1) directing that the above-listed cases be related within the meaning of CRC Rule 3.300 and (2) assigning each of the cases to Department 54 for resolution of all pending and future law and motion matters since the earliest of the three cases was originally (and still is) assigned to Department 54.

All three of the above-listed cases shall be STAYED pending the order from the Presiding Judge and after issuance of that order, the parties may after appropriate meet-and-confer then contact the assigned law and motion department to coordinate new hearing dates for any law and motion matters currently on file but stayed by order of this Court.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 13 **2016-00204556-CU-CO**

Ascentium Capital, LLC vs. Star Beauty, Inc.

Nature of Proceeding: Hearing on Demurrer to First Amended Cross-Complaint

Filed By: Alper, Andrew K.

This matter is STAYED pursuant to the tentative ruling issued by Dept. 54 in *Ascentium Capital, LLC v. VIP Collection, Inc.* (Case No. 2016-00204532), pending the "related" case order from the Presiding Judge.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 14 **2016-00204740-CU-MC**

John Tos vs. Ca High Speed Rail Authority

Nature of Proceeding: Hearing on Demurrer

Filed By: O'Grady, Sharon L.

***** If oral argument is timely requested on this matter, it will take place at** 11:00 a.m. *******

Defendants California High-Speed Rail Authority (“CHRSA”) and The Board of Directors of CHSRA (collectively "Defendants") demurrer to the first and second causes of action in the First Amended Complaint (“FAC”) of Plaintiffs, John Tos, Quentin Kopp, Town of Atherton, a municipal corporation, County of Kings, a subdivision of the State of California, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, a California nonprofit

corporation, Transportation Solutions Defense and Education Fund, a California nonprofit corporation, and California Rail Foundation, a California nonprofit corporation ("Plaintiffs"). Defendants' demurrer is sustained without leave to amend as set forth below.

Plaintiffs' request for judicial notice is granted as to Exhibits A, B, and D, and denied as to C and E.

Plaintiffs' action challenges the constitutionality of AB 1889, a statute enacted in the 2015-2016 Legislative session that added Section 2704.78 to the California Streets & Highways Code ("§2704.78"). In enacting new §2704.78, the Legislature expressly stated its intent was to clarify an existing provision of the Streets & Highways Code §2704.08(d) which had been enacted by the voters in November 2008 as part of the Safe, Reliable High-Speed Passenger Train Bond Act for the Twenty-First Century, designated on the ballot as Proposition 1A ("Prop. 1A"). Prop. 1A was a 9.95 billion dollar California general obligation bond measure intended to assist in funding a portion of the construction of a high-speed rail system in California under the governance of CHSRA. Plaintiffs allege that the enactment of §2704.78 violates the California Constitution because, instead of clarifying the voter enacted statute, new §2704.78 materially changes the terms of the bond measure without seeking or obtaining the voters' prior lawful approval. Plaintiffs' argue that such a material amendment to Prop. 1A is a violation of Article XVI Section 1 of the California Constitution. Thus, Plaintiffs seek the Court's declaration that §2704.78 is facially unconstitutional and therefore void.

The core of Plaintiffs' action is the meaning of the phrase "suitable and ready for high-speed train operation" found only twice in Prop. 1A, and whether the Legislature's subsequent enactment of a definition for that phrase through AB 1889 unconstitutionally conflicts with the original meaning enacted by the voters of California and thus violates Article XVI Section 1 of the California Constitution.

In addition, Plaintiffs allege that CHSRA intends to expend public funds in substantial reliance upon the precept that §2704.78 is constitutionally valid, but if §2704.78 is instead declared unconstitutional, any intervening expenditures premised upon its validity are illegal as directly contrary to the preexisting and controlling provisions of Prop. 1A as enacted by the voters.

Plaintiffs' FAC expressly seeks the following relief: (1) a declaratory judgment that AB 1889 violates Article XVI Section 1 of the California Constitution and is therefore invalid and void; (2) a preliminary injunction, and permanent injunction preventing CHSRA from expending any public funds toward the approval of a Funding Plan that relies on AB 1889 for purported compliance with the requirements of Prop. 1A; (3) a preliminary injunction, and permanent injunction preventing CHSRA from expending any Prop. 1A high-speed rail construction bond funds towards the construction of any and all projects based on a second Funding Plan that relies upon AB 1889 for purported compliance with the requirements of Streets & Highways Code §2704.08(d); and (4) recovery and restoration to the California State Treasury of any funds that

CHSRA illegally, improperly, or wastefully spent toward the preparation or approval of any improper/noncompliant Funding Plans, and of any Prop. 1A funds illegally spent to implement or in reliance upon such alleged improper and/or illegal Funding Plans.

Defendants' demurrer alleges that: (1) the Second Cause of Action fails to state facts sufficient to constitute a cause of action under Code of Civil Procedure section 430.10, subdivision (e), because any challenge to the CHRSA's funding plans must be brought only in the form of a petition for writ of mandamus, and not a civil complaint seeking injunctive relief pursuant to Code of Civil Procedure section 526a; (2) the Second Cause of Action also fails to state facts sufficient to constitute a cause of action because the facts alleged establish that the claim is not ripe since the CHRSA had not issued a final administrative decision when the action was commenced and the action may not be amended now to allege facts or conduct that occurred after the action was commenced; and (3) the First Cause of Action fails to state facts sufficient to constitute a cause of action because the facts alleged establish that the claim is also not ripe since no Plaintiff had experienced any harm attendant to the alleged facial unconstitutionality of AB 1889 when the action was commenced.

Plaintiffs oppose Defendants' demurrer to the Second Cause of Action arguing that whether a claim should have been prosecuted in the form and nature of a petition for writ of mandamus is not a viable ground for general demurrer. Plaintiffs cite *Scott v. Indian Wells* (1972) 6 Cal.3d 541, 546 for the proposition that "[a]s against a general demurrer… it is unimportant that plaintiff's pleading was not in form a petition for mandamus or certiorari. All that is required is that plaintiff state facts entitling him to some type of relief, and if a cause of action for mandamus or certiorari has been stated, the general demurrer should have been overruled. [Citations.]" (*Scott v. Indian Wells* (1972) 6 Cal. 3d 541, 546 citing *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 638.) *Scott* further states that as a result of this rule "an action for declaratory relief to review an administrative order should be regarded as a petition for a writ of mandate for purposes of ruling upon a general demurrer." (*Id*.) In Reply, Defendants attempt to distinguish *Scott* upon the ground that the Supreme Court held that the trial court had erred in dismissing plaintiffs' complaint without leave to amend instead of allowing the plaintiff to cure its defects by amendment or treat it as a writ petition, and that in contrast here the Plaintiffs are not arguing that their complaint should be treated as a writ petition; they are arguing that they may proceed via civil complaint." (Reply, p. 4, fn. 1.) That distinction is not entirely correct or supportive of the demurrer since Plaintiffs state that they should be granted leave to amend if there is any reasonable possibility that the complaint can be amended to state a viable cause of action. (Opp., p. 5:11-13.) Under *Scott*, even if Plaintiffs' claim for injunctive relief against any expenditure of Prop. 1A funds is in fact a veiled challenge to the CHSRA's administrative decisions in the form of the approved plans, and may only be prosecuted in the form of mandamus, the trial court is instructed to construe the claim as one for mandamus as against a general demurrer. Thus, the demurrer upon the limited ground that the Second Cause of Action should have been prosecuted in mandamus is overruled.

Although Plaintiffs rely upon *Scott*, Plaintiffs nevertheless oppose Defendants' demurrer to the Second Cause of Action upon the ground that it is not a veiled action in mandamus. Plaintiffs argue that the claim is not in fact a challenge to Defendants' approval of the Funding Plan. Plaintiffs contend that their second cause of action is instead a viable independent claim for injunctive relief with standing arising under CCP 526a, targeting any present or future illegal expenditure of bond funds premised upon the asserted unconstitutionality of AB 1889. At its core, Plaintiffs' second cause of action is necessarily a challenge to CHSRA's administratively formulated Funding Plans, based upon the contention that those plans are infected with the alleged unconstitutional loosening of statutory plan requirements embodied in new §2704.78.

§2704.08, the statute that Plaintiffs allege was unconstitutionally amended by AB 1889, has no significance beyond the administrative deliberative process through which CHSRA ultimately has access to use Prop. 1A bond funds appropriated by the Legislature. Specifically, whether the construction project described in a funding plan will result in a usable segment that is "suitable and ready for high-speed train operation" is at base only an educated estimation to be made in and through the administrative process. If at the completion of a Prop. 1A funded construction project, the result is not a usable segment that is "suitable and ready for high-speed train operation," neither §2704.08 nor any other provision of Prop. 1A provide any remedy or penalty. In short, the phrase "suitable and ready for high-speed train operation" is only a metric in the administrative process.

Consequently, the action framed by the FAC is one that must be adjudicated in mandamus, and should be construed as such. Further, the First Cause of Action for declaratory relief based upon the alleged facial unconstitutionality of §2704.78, lacks a justiciable controversy unless it is also tethered to the challenged Funding Plans and the threatened illegal expenditure of public funds under those plans which were the product of the administrative process. In that respect, the declaratory relief action is integral to and dependent upon the challenge to CHSRA's administratively formulated Funding Plans.

As to the issue of whether the Plaintiffs' claims were ripe for adjudication at the commencement of the action, the court finds that the allegations did not establish that the claims were ripe. The challenged Funding Plans were not final when the action was commenced, and those plans provide the required justiciable controversy upon which the declaratory relief action could be based. Defendants contend that the complaint may not be amended or supplemented at this time with facts and events that occurred after the action was commenced that may "ripen" the Plaintiffs' claims, and Plaintiffs argue only that the claims were ripe enough when the action commenced although the Funding Plans were not final.

The Court concludes that the Plaintiffs' claims were not ripe at the commencement of the action, or at the filing of the FAC. This defect may not be cured now by amending the FAC to state facts and events that occurred after the action was commenced. For this reason, the demurrer is sustained without leave to amend.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 15 **2016-00204740-CU-MC**

John Tos vs. Ca High Speed Rail Authority

Nature of Proceeding: Motion to Strike

Filed By: O'Grady, Sharon L.

***** If oral argument is timely requested on this matter, it will take place at** 11:00 a.m. *******

Defendants California High-Speed Rail Authority (“CHRSA”) and The Board of Directors of CHSRA (collectively "Defendants"), moved to strike as to the First Amended Complaint (“FAC”) of Plaintiffs, John Tos, Quentin Kopp, Town of Atherton, a municipal corporation, County of Kings, a subdivision of the State of California, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, a California nonprofit corporation, Transportation Solutions Defense and Education Fund, a California nonprofit corporation, and California Rail Foundation, a California nonprofit corporation (“Plaintiffs”). Defendants’ motion to strike is moot in light of the court ruling upon Defendants' demurrer sustaining it without leave to amend.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc. §1019.5; CRC Rule 3.1312.)

Item 16 **2016-00204740-CU-MC**

John Tos vs. California High Speed Rail Authority

Nature of Proceeding: Order to Show Cause Re: Preliminary Injunction

Filed By: Flashman, Stuart

If oral argument is timely requested on this matter, it will take place at 11:00 a.m.

Plaintiffs, John Tos, Quentin Kopp, Town of Atherton, a municipal corporation, County of Kings, a subdivision of the State of California, Morris Brown, Patricia Louise Hogan-Giorni, Anthony Wynne, Community Coalition on High-Speed Rail, a California nonprofit corporation, Transportation Solutions Defense and Education Fund, a California nonprofit corporation, and California Rail Foundation, a California nonprofit corporation (“Plaintiffs”), petition for a preliminary injunction in conjunction with their action for declaratory and injunctive relief as to Defendants California High-Speed Rail Authority ("CHSRA") and The Board of Directors of CHSRA ("Board"). Plaintiffs’ petition is denied as set forth below.

Procedural Background

On March 22, 2017, Plaintiffs brought an *ex parte* application for temporary restraining