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EXEMPT FROM FEES PER
GOVERNMENT CODE §6103

7 Attorneys for Plaintiffs and Plaintiffs
8 JOHN TOS, AARON FUKUDA,
AND COUNTY OF KINGS
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JOHN TOS, AARON FUKUDA, and COUNTY
13 OF KINGS,
Plaintiffs
14 v.
CALIFORNIA HIGH SPEED RAIL Authority *et*
15 *al.*,
Defendants

No. 34-2011-00113919 filed 11/14/2011
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31 (to be handled as writ)
PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF REPLY BRIEF
ON REMEDIES

Date: November 8, 2013
Time: 9:00 AM
Dept. 31
Judge: Hon. Michael P. Kenny

19 Plaintiffs John Tos, Aaron Fukuda, and County of Kings ("Plaintiffs") hereby ask the
20 Court to take judicial notice of the following:

21 1. Under Evidence Code §452(c), of Exhibit 3 to Amendment 5 to the Cooperative Funding
22 Agreement between the Federal Railroad Administration and the California High-Speed Rail
23 Authority, dated December 5, 2012 and attached as Exhibit A to the Declaration of William H.
24 Warren submitted herewith. This document is part of the same document for which Defendants
25 herein have requested judicial notice as "Exhibit 1" to their request. It has only been enlarged
26 and the pages divided in half to make it more readable.

1 2. Under Evidence Code §452(c), of the map entitled, “California High Speed Train Project,
2 Construction Package 1, limits of Work Map” attached as Exhibit F to the Declaration of
3 William H. Warren submitted herewith. This document was downloaded directly from the
4 official website of the California High-Speed Rail Authority.

5 3. Under Evidence Code §452(c), of the map entitled, “Map of the 130-mile Initial
6 Construction Segment (ICS) Showing Construction Projects (CP1-CP-4 and CP-5)” attached as
7 Exhibit E to the Declaration of William H. Warren submitted herewith. This document was
8 downloaded directly from the official website of the California High-Speed Rail Authority.

9 4. Under Evidence Code §452(c), of a letter from Mr. Roy Keinitz, Undersecretary for
10 Policy at the U.S. Department of Transportation to Mr. Roelof van Ark, then Chief Executive
11 Officer of the California High-Speed Rail Authority, dated May 25, 2011, concerning the terms
12 of the federal grants to the Authority, and attached as Exhibit G to the Declaration of William H.
13 Warren submitted herewith. This document was downloaded directly from the official website
14 of the California High-Speed Rail Authority.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. THE COURT IS ENTITLED TO TAKE JUDICIAL NOTICE OF THE**
17 **REQUESTED DOCUMENTS.**

18 Under Evidence Code §452, a court is allowed to take judicial notice of enumerated
19 forms of factual or documentary evidence. In particular, under subsection (c), a court may take
20 judicial notice of official acts of the executive department of the United States or of any state.
21 (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 911 fn.8.) All of the documents for which
22 notice is requested represent official acts of either the California High-Speed Rail Authority,
23 which is part of the executive branch of the State of California, or of the United States
Department of Transportation, which is part of the Executive Branch of the United State, or both.

24 **II. THE REQUESTED ITEMS ARE RELEVANT TO THE COURT’S**
25 **CONSIDERATION OF THE REMEDIES IN THIS CASE.**

26 In addition to being subject to judicial notice, an item for which judicial notice is
27 requested must be relevant in order for judicial notice to be granted. (*People v. McKinzie* (2012)
28 54 Cal.4th 1302, 1326.) The requested items are relevant in that they relate to the questions

1 involving the uses and availability of federal grant funds for use in constructing the Central
2 Valley Project of the California High-Speed Rail Authority. These, in turn, are relevant to
3 whether actions of the California High-Speed Rail Authority have resulted in it committing
4 Proposition 1A bond funds towards the construction of a portion of a corridor or usable segment
5 of the high-speed rail system without first preparing and having approved by the Director of
6 Finance an updated funding plan for that corridor or usable segment, as required under
7 §2704.08(d) of the bond measure. That, in turn, is relevant to whether mandamus or other relief
8 is available for the violations of the measure.


9 Dated: October 23, 2013

10 Respectfully submitted,

11 Michael J. Brady

12 Stuart M. Flashman

13 Attorneys for Plaintiffs John Tos et al.

14 By: 
15 _____
16 Stuart M. Flashman