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9 **(Exempt from filing fees – Gov. Code §6103)**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

TOWN OF ATHERTON, a Municipal Corporation, CITY OF MENLO PARK, a Municipal Corporation, CITY OF PALO ALTO, a California Charter City and Municipal Corporation, PLANNING AND CONSERVATION LEAGUE, a California nonprofit corporation, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation, COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation, MIDPENINSULA RESIDENTS FOR CIVIC SANITY, an unincorporated association, and PATRICIA LOUISE HOGAN-GIORNI,

Petitioners and Plaintiffs

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, and DOES 1-20,

Respondents and Defendants

Case No.:

VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

[Public Resources Code §21168.5; Code of Civil Procedure §§526a, 1060, 1085]

Lawsuit under the California Environmental Quality Act

Petitioners and Plaintiffs TOWN OF ATHERTON (hereinafter, "ATHERTON"), CITY OF MENLO PARK (hereinafter, "MENLO PARK"), CITY OF PALO ALTO (hereinafter, 'PALO ALTO'), PLANNING AND CONSERVATION LEAGUE (hereinafter, "PCL"), TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND (hereinafter, "TRANSDEF"), CALIFORNIA RAIL FOUNDATION (hereinafter, "CRF"), COMMUNITY

1 COALITION ON HIGH-SPEED RAIL (hereinafter, “CC-HSR”), MIDPENINSULA
2 RESIDENTS FOR CIVIC SANITY (hereinafter, “RESIDENTS”) and PATRICIA LOUISE
3 HOGAN-GIORNI (“GIORNI”), and the foregoing, collectively, to be referred to hereinafter as
4 “PETITIONERS” hereby allege as follows:

5 INTRODUCTION

6 1. PETITIONERS bring this action to challenge the decision of Respondent and Defendant
7 CALIFORNIA HIGH SPEED RAIL AUTHORITY (“CHSRA”) to approve the Bay Area to
8 Central Valley High Speed Train Project (hereinafter, “Project”), including specifically choosing
9 an alignment for the Project, without providing legally adequate review under the California
10 Environmental Quality Act Public Resources Code section 21000 *et seq.* (“CEQA”). CHSRA’s
11 actions are illegal as they violate CEQA and the California Code of Regulations, Title 14,
12 section 15000 *et seq.* (“CEQA Guidelines”).

13 2. PETITIONERS allege that CHSRA approved the Project based on a Final Revised
14 Programmatic Environmental Impact Report (“FRPEIR”) that did not have an adequate project
15 description, did not give adequate consideration to the Project’s impacts on the environment,
16 failed to propose adequate mitigation measures to address the Project’s significant impacts,
17 failed to provide a fair and adequate consideration of feasible alternatives to the approved
18 Project, and failed to provide adequate responses to comments on the Draft Revised
19 Programmatic Environmental Impact Report Materials (“DRPEIRM”) submitted by other public
20 agencies, as well as by concerned organizations and individuals. PETITIONERS further allege
21 that CHSRA violated CEQA’s procedural mandates by not recirculating the FRPEIR for
22 additional public comment when significant new information was added to that document after it
23 was circulated.

24 3. PETITIONERS, and specifically RESIDENTS and GIORNI, further allege that
25 RESPONDENTS, acting in violation of Code of Civil Procedure §526a, intend to illegally
26 expend public funds by issuing one or more project-level Environmental Impact Reports
27 (“EIRs”) when the FRPEIR is invalid and therefore cannot be relied upon as a basis for a
28 project-level EIR. PETITIONERS further allege that RESPONDENTS’ release of project-level
29 EIRs will result in irreparable harm unless their release is enjoined by this Court.

1 4. The Project is part of a larger proposed legislatively-mandated plan to develop high
2 speed rail service between the cities of Los Angeles and San Francisco. It follows on CHSRA's
3 earlier approval of an overall proposal for such high speed rail service, based on a broader
4 overall FPEIR/EIS. However, that FPEIR/EIS specifically left undetermined the route the high
5 speed rail project would take from the Central Valley to its northwestern terminus of San
6 Francisco. The Project being challenged herein was intended to fill that gap.

7 5. While the Project entailed many studies, analyses, and choices, perhaps the single biggest
8 choice was between two major alternative alignments: the "Pacheco Alignment" running north
9 and westward from the Central Valley main line south of Merced, through Pacheco Pass then
10 north through Gilroy to San Jose and then north and west up the San Francisco Peninsula using
11 the so-called Caltrain corridor to San Francisco, and the "Altamont Alignment" running north
12 and westward from the Central Valley main line north of Modesto, through Tracy, through the
13 Altamont Pass and across the East Bay, with one branch going south and westward to San Jose
14 and a second branch going west and northward across San Francisco Bay to San Francisco.

15 6. CHSRA had previously prepared a Programmatic EIR/EIS for the Project, which it
16 certified in August 2008. That certification, and the accompanying approval of the Pacheco
17 alignment, were challenged in this Court for violations of CEQA. (Sacramento County Superior
18 Court, Case No. 34-2008-80000022.) On November 3, 2009, this Court entered judgment in
19 favor of the petitioners in that case and against CHSRA and issued its writ of mandate against
20 CHSRA. The writ commanded CHSRA to rescind its certification of the FPEIR and its approval
21 of the Project, and to revise the PEIR in accordance with CEQA and the CEQA Guidelines
22 before considering any new approval for the Project.

23 7. On or about September 2, 2010, CHSRA certified its FRPEIR for the Project and re-
24 approved the Pacheco alignment for the Project, making adjustments to that alignment in the area
25 South of San Jose.

26 8. PETITIONERS allege that CHSRA's certification of the FRPEIR and re-approval of the
27 Project were done in violation of CEQA in numerous respects.

1 9. CHSRA's actions will harm PETITIONERS, their members, property owners, and
2 residents, and the public, by causing serious environmental harm along the Pacheco Alignment
3 route. That harm, because of the inadequacy of the environmental review under CEQA, was
4 neither properly disclosed nor adequately mitigated. In addition, it could have been avoided
5 through choice of other alignment alternatives, which CHSRA refused to consider adequately.

6 10. PETITIONERS seek this Court's peremptory writ of mandate ordering the CHSRA to
7 rescind its actions in approving the Project and certifying the FRPEIR for the Project.
8 PETITIONERS also seek this Court's temporary restraining order and preliminary and
9 permanent injunction to prevent CHSRA from proceeding with implementing the Project in the
10 absence of adequate review under CEQA. PETITIONERS more specifically seek this Court's
11 temporary restraining order and preliminary and permanent injunction to prevent CHSRA from
12 releasing one or more project-level EIRs prior to having prepared and certified an adequate
13 program-level EIR and properly made the programmatic decision that is a prerequisite for
14 considering project-level decisions. PETITIONERS also seek this Court's declaration that the
15 PROJECT approval by CHSRA violated CEQA. Finally, PETITIONERS, acting in the public
16 interest, seek an award of costs and of attorneys' fees under Code of Civil Procedure §1021.5 or
17 other applicable authority.

17 **PARTIES**

18 11. Petitioner TOWN OF ATHERTON is a municipal corporation, formed and existing
19 under the general laws of the State of California. ATHERTON lies directly astride of the
20 proposed Pacheco Pass alignment down the San Francisco Peninsula. It and its citizens will
21 therefore be directly affected by CHSRA's decisions to certify the FRPEIR for the Project and
22 approve the Pacheco Pass alignment as part of the Project.

23 12. Petitioner CITY OF PALO ALTO is a California charter city and municipal corporation,
24 formed and existing under its charter and the laws of the State of California. PALO ALTO lies
25 directly astride of the proposed Pacheco Pass alignment down the San Francisco Peninsula. It
26 and its citizens will therefore be directly affected by CHSRA's decisions to certify the FRPEIR
27 for the Project and approve the Pacheco Pass alignment as part of the Project.

1 13. Petitioner CITY OF MENLO PARK is a municipal corporation, formed and existing
2 under the general laws of the State of California. MENLO PARK lies directly astride of the
3 proposed Pacheco Pass alignment down the San Francisco Peninsula. It and its citizens will
4 therefore be directly affected by CHSRA's decisions to certify the FRPEIR for the Project and
5 approve the Pacheco Pass alignment as part of the Project.

6 14. Petitioner PLANNING AND CONSERVATION LEAGUE is a public benefit nonprofit
7 California corporation, established and existing under the laws of the State of California,
8 headquartered in Sacramento, California. PCL works, using the political and legal systems, to
9 enact and implement policies that protect and restore the California environment. PCL has a
10 long-standing interest in seeing that California develop a properly planned and environmentally
11 sensitive high-speed rail system. PCL is an affiliate of the National Wildlife Federation.

12 15. Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND is
13 a California nonprofit public benefit corporation, headquartered in the Bay Area, established and
14 existing under the laws of the State of California as a regional advocate to promote
15 transportation solutions favoring transit over new highway capacity, development around transit
16 stops rather than sprawl into the Bay Area's open spaces, and more market-oriented pricing of
17 private motor vehicle travel. TRANSDEF advocates on behalf of its members and the public at
18 large for effective regional planning, smart growth, improved transit service, and cleaner air.
19 TRANSDEF has participated in the development of the 2001, 2005 and 2009 Bay Area Regional
20 Transportation Plans and Transportation Improvement Programs. TRANSDEF has actively
21 engaged in numerous public agency proceedings involving transportation and air quality issues,
22 including specifically the administrative proceedings around the Project and its environmental
23 review under CEQA.

24 16. Petitioner CALIFORNIA RAIL FOUNDATION, based in Sacramento, is a California
25 nonprofit public benefit corporation, established and existing under the laws of the State of
26 California. CRF works to educate the public on rail and bus technology and promote cost-
27 effective expansion of the state's public transportation services.

1 17. Petitioner COMMUNITY COALITION ON HIGH-SPEED RAIL is a California
2 nonprofit public benefit corporation, established and existing under the laws of the State of
3 California. CC-HSR seeks to inform the public about the benefits and potential pitfalls of high-
4 speed rail, and particularly its effects on residents of the San Francisco Peninsula, and to
5 advocate for a high-speed rail system that respects the rights and values of residents of the San
6 Francisco Peninsula. CC-HSR files this action on behalf of itself and its members who are
7 citizens, residents, property owners, and taxpayers within the State of California, and more
8 specifically within the San Francisco Peninsula in the general area through which the CHSRA
9 proposes to run the Project along the Pacheco Alignment.

10 18. PETITIONER MIDPENINSULA RESIDENTS FOR CIVIC SANITY is an
11 unincorporated association whose members are citizens, residents, property owners and
12 taxpayers within the cities of Burlingame and San Mateo, both of which are located along
13 CHSRA's proposed right-of-way for the Pacheco Pass alignment. RESIDENTS seeks to protect
14 the best interest of the mid-peninsula cities within which its members live, and specifically
15 opposes the negative impacts the high-speed rail line could have on those communities.
16 RESIDENTS' members have paid taxes to the State of California that are being used by
17 CHSRA. RESIDENTS brings this action on behalf of itself and its members. RESIDENTS was
18 formed subsequent to the approval by CHSRA of the Project. Pursuant to Public Resources
19 Code §21177, members of RESIDENTS commented on the FRPEIR that is the subject of this
20 action and raised objections to CHSRA's approval of the Project prior to the close of the public
21 hearing on the Project approval.

22 19. Petitioner and Plaintiff PATRICIA LOUISE HOGAN-GIORNI is a resident, voter, and
23 taxpayer in the City of San Mateo. GIORNI submitted written comments on the DRPEIRM to
24 CHSRA during the public comment period, which CHSRA purported to respond to. GIORNI
25 also submitted written comments to CHSRA on the FRPEIR raising objections to that
26 document's adequacy and to CHSRA's proposed action in approving the Pacheco alignment,
27 prior to the close of the public hearing on the approval of the Project.

1 20. PETITIONERS and their members/citizens have a direct and beneficial interest in the
2 approval and implementation of a well-planned, efficient, and environmentally sensitive high
3 speed rail system within California and the San Francisco Bay area, and more specifically in the
4 fully-informed, fair, and proper choice of alignment for the Project, in full compliance with
5 CEQA and the CEQA Guidelines.

6 21. PETITIONERS, and specifically PCL, CC-HSR, and RESIDENTS, are organizations
7 whose members pay taxes to the State of California. PCL, CC-HSR, RESIDENTS, and GIORNI
8 have a direct and beneficial interest in seeing that their taxpayer dollars are properly used by the
9 State of California, and more specifically by CHSRA, and in preventing CHSRA from using
10 their and their members' tax dollars in illegal expenditures of public funds.

11 22. Respondent and Defendant CALIFORNIA HIGH-SPEED RAIL AUTHORITY was
12 established as an independent state authority by the legislature in 1996 and charged with
13 planning, constructing and operating a high-speed train system to serve the Los Angeles to San
14 Francisco mainline route as well as other major California cities along or connecting with that
15 mainline route. CHSRA is governed by a seven member Board of Directors (hereinafter,
16 "Board"). CHSRA, its staff, and contractors and consultants working under its control and
17 direction, prepared the prior FPEIR/EIS for the Project as well as the DRPEIRM and FRPEIR,
18 and the Board of CHSRA certified the FRPEIR for the Project and gave final approval to the
19 Project.

20 23. PETITIONERS are unaware of the true names and capacities of Respondents and
21 Defendants DOES 1 through 20, inclusive, and therefore sue those Respondents and Defendants
22 under fictitious names. PETITIONERS will amend their Petition and Complaint to show their
23 true names and capacities when the Respondents and Defendants have been identified and their
24 capacities ascertained. Each of the Respondents and Defendants is the agent, employee, or both
25 of every other Respondent and Defendant, and each performed acts on which this action is based
26 within the course and scope of such Respondent's and Defendant's agency, employment, or
27 both. PETITIONERS are informed and believe, and therefore allege, that each Respondent and
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1 Defendant is legally responsible in some manner for the events and happenings referred to
2 herein.

3 **PROJECT BACKGROUND**

4 24. In 1993, the Governor of California issued Executive order W-48-93 calling for
5 establishment of a task force to study the feasibility of implementing a statewide high-speed rail
6 system. Shortly thereafter, the Governor signed Senate Concurrent Resolution 6 authorizing
7 creation of a nine-member Intercity High Speed Rail Commission (hereinafter, "Commission")
8 to study and develop a framework for implementing such a system over a 20-year time horizon.

9 25. In 1996, the Commission issued its final report. In that report, the Commission
10 summarized its study of a statewide high speed rail system and specifically of different potential
11 alignments for portions of that system. The report identified the Altamont Pass alignment for the
12 route between the Bay Area and the Central Valley as the preferred alternative, concluding that,
13 "The Panoche or Pacheco Passes would result in higher impacts than the Altamont Pass,
14 particularly impacts to wetlands and habitat for threatened and endangered species."

15 26. After its creation in 1996, the CHSRA prepared and, in or about the year 2000, adopted a
16 High Speed Train System Business Plan. The CHSRA then moved forward toward the
17 production and certification of a Programmatic EIR/EIS on the broad outlines of the statewide
18 High Speed Rail system.

19 27. In or about January 2004, the CHSRA released its DPEIR/EIS for the statewide high
20 speed rail system. That 2004 DPEIR/EIS evaluated only two alternative alignments for access to
21 the San Francisco Bay Area: the Pacheco Pass Alignment and the Panoche Pass Alignment. The
22 2004 DPEIR/EIS rejected an Altamont Pass Alignment as not meeting the purpose and need of
23 the project due to the need for a new Bay Crossing and the claimed reduction in train
24 frequencies.

25 28. PETITIONERS, public agencies, other organizations, and individuals submitted
26 numerous comments on the 2004 DPEIR/EIS objecting to its failure to give serious consideration
27 of the Altamont Alignment option and pointing out deficiencies in the analysis and serious
28 environmental problems inherent in the Pacheco Alignment.

1 29. In or about December 2005, the CHSRA certified the FPEIR/EIS for the statewide high
2 speed rail system and approved the statewide project. In certifying the FPEIR/EIS for the
3 statewide high speed rail system and approving the project, the CHSRA specifically determined
4 not to choose an alignment for access to the San Francisco Bay Area from the Central Valley,
5 putting that decision off for further study.

6 **PROJECT HISTORY**

7 30. The CHSRA resolution approving the statewide high speed rail system specifically
8 authorized CHSRA staff to prepare a separate programmatic EIR to study the options for a high
9 speed rail connection between the San Francisco Bay Area and the Central Valley portion of the
10 high speed rail system. It specifically mandated study of both the Pacheco Pass Alignment and
11 the Altamont Pass Alignment alternatives.

12 31. The 2007 DPEIR/EIS for the Project was prepared concurrently and in coordination with
13 a separate study undertaken by the Metropolitan Transportation Commission (“MTC”), the Bay
14 Area Rapid Transit District (“BART”), and the Peninsula Rail Joint Powers Authority
15 (“Caltrain”) to develop a Bay Area Regional Rail Plan. However, that effort did not involve any
16 separate environmental review component.

17 32. On or about July 16, 2007, CHSRA released a DPEIR/EIS for the project. The document
18 consisted of nine substantive chapters, totaling almost 800 pages of text, plus numerous tables,
19 diagrams, and figures. In addition to the document itself, CHSRA also released a series of
20 technical studies in support of the 2007 DPEIR/EIS. These studies included studies prepared by
21 Cambridge Systematics, Inc., under contract with MTC, to develop a model for the ridership and
associated revenue of the Project, and for the High-Speed Rail system as a whole.

22 33. On or about November 14, 2007, CHSRA staff released a document entitled, “Summary
23 of Public Hearings and Comment Period.” The eight-page document purported to summarize the
24 issues raised by comments submitted on the 2007 DPEIR/EIS on the Project. That same day,
25 CHSRA staff also released a document entitled, “Staff Recommendations: Preferred Network
26 Alternative, HST Alignment and Station Locations.” Even though the time period for public
27 review and comment on the 2007 DPEIR/EIS had already closed and even though responses to

1 comments on the 2007 DPEIR/EIS had not yet been completed or provided to the CHSRA
2 Board, the staff recommendations designated the Pacheco Alignment Alternative as the preferred
3 alternative in the 2007 DPEIR/EIS, with the proviso that at an unspecified future date, with
4 unspecified future funding, a lower speed regional rail link between the Central Valley and the
5 East Bay through the Altamont Pass could be added. The Board purported to take no action on
6 the staff recommendations.

7 34. On or about May 21, 2008, CHSRA released the FPEIR/EIS for the Project, consisting
8 of three volumes: Volume I – the FPEIR/EIS itself; Volume II – the technical appendices to the
9 FPEIR/EIS; and Volume III – comments received on the DPEIR/EIS and responses to those
10 comments.

11 35. In or about June 2008, CHSRA released a document entitled, “Addendum/Errata to Final
12 Program EIR/EIS for Bay Area to Central Valley Portion of the California HST System”
13 (hereinafter, “Errata/Addendum”). The Errata/Addendum contained modifications to the
14 FPEIR/EIS’s analyses of air quality and energy use. The Errata/Addendum was not circulated
15 for public comment.

16 36. On or about July 9, 2008, after hearing staff-prepared responses to the comments
17 received at the public hearing, the CHSRA Board voted to certify the FPEIR/EIS for the Project
18 and to approve the Project and, on that same day, CHSRA filed a Notice of Determination for its
19 approval of the Project.

20 37. On August 8, 2008, Petitioners and Plaintiffs ATHERTON, MENLO PARK, PCL, CRF,
21 TRANSDEF, and the BayRail Alliance filed, in this Court, a Petition for Peremptory Writ of
22 Mandate and Complaint for Injunctive and Declaratory Relief against CHSRA, challenging
23 CHSRA’s approval of the Project and of the FPEIR for the Project for violations of CEQA.

24 38. The case, designated as Case No. 34-2008-80000022 was fully briefed, and was heard by
25 Judge Michael Kenny in Department 31 of this Court on May 29, 2009.

26 39. On November 3, 2009, Judge Kenny entered final judgment in favor of the Petitioners
27 and Plaintiffs in that action. The Court also issued its Writ of Mandate directed at CHSRA and
28 directing it to rescind its approvals for the Project, the findings in support of those approvals, and
29

1 its certification of the FPEIR for the Project. The Writ of Mandate further commanded that the
2 CHSRA fully comply with CEQA, the CEQA Guidelines, and the Court’s final judgment prior to
3 certifying a new PEIR for the Project or considering any approvals for the Project. A copy of
4 that Writ of Mandate is attached hereto as Exhibit A.

5 40. On January 6, 2010, CHSRA filed an Initial Return on Writ of Mandate reporting to the
6 Court that it had complied with the writ of mandate in rescinding its approvals for the Project, its
7 findings in support of those project approvals, and its certification of the FPEIR for the Project.

8 41. At the beginning of February, 2010, PETITIONERS first learned that the
9 ridership/revenue model used to obtain figures used in the 2007 DPEIR/EIS was not the
10 ridership model that had been published by CHSRA in connection with the 2007 DPEIR/EIS.

11 42. TRANSDEF retained an expert transportation modeling consultant to evaluate the newly-
12 discovered ridership model. The consultant evaluated the model and prepared a report that
13 indicated that the model contained numerous flaws and was untrustworthy.

14 43. On or about March 11, 2010, CHSRA formally released for public review and comment
15 the DRPEIRM for the Project. The DRPEIRM was entitled, “Bay Area to Central Valley High-
16 Speed Train Project Revised Draft Program Environmental Report Material.” In releasing the
17 DRPEIRM, CHSRA also released a Notice of Availability that explicitly indicated that CHSRA
18 would only have a duty to respond to comments, “... that relate to the content of this Revised
19 Draft Program EIR Material.”

20 44. The DRPEIR circulated until April 26, 2010. During that time, literally thousands of
21 comments were submitted by public agencies, organizations, and members of the public.

22 45. On or about April 26, 2010, TRANSDEF, CRF, and PCL jointly submitted a comment
23 letter on the DRPEIRM. That letter raised the issue of the flaws in the ridership model used in
24 the 2008 FPEIR/EIS and attached the expert report dissecting the model’s numerous flaws.

25 46. On or about May 6, 2010, the remaining petitioners in case 34-2008-80000022 filed a
26 Petition for Writ of Error Coram Nobis asking the Court to reopen the final judgment in the case
27 to consider the previously-hidden evidence of the ridership model and its flaws. After briefing
28 and a hearing on August 20, 2010, on or about September 13, 2010 the Court entered its order

1 denying the writ petition, finding, among other things, that the petitioners had an alternative
2 remedy through participating in the CEQA process for the revised PEIR.

3 47. On or about August 20, 2010, CHSRA released the FRPEIR for the Project.

4 48. On or about September 1, 2010, CHSRA held a public hearing to receive comments on
5 the FRPEIR. Public agencies, organizations, and members of the public submitted both oral and
6 written comments before and during the public hearing objecting to the certification of the
7 FRPEIR and to the proposed approval of the Project.

8 49. On or about September 2, 2010, CHSRA certified the FRPEIR, approved the Project, and
9 approved findings of fact purporting to support its actions. The approved alignment for the
10 Project was the variation on the Pacheco Pass alternative first proposed in the DRPEIR, going
11 from San Francisco south along the Caltrain right-of-way through San Jose, and thence south
12 parallel and just east of the Union Pacific right-of-way past Morgan Hill and Gilroy, across
13 Pacheco Pass, and then south and eastward to Merced. CHSRA filed its notice of determination
14 with the State of California Office of Planning and Research that same day.

15 **GENERAL ALLEGATIONS**

16 50. PETITIONERS have fully exhausted their administrative remedies to the extent required
17 by law. More specifically, PETITIONERS have fully satisfied the requirements of Public
18 Resources Code §21177. PETITIONERS and their members/citizens/elected officials submitted
19 oral and/or written comments to CHSRA, prior to the close of the public hearing before the
20 approval of the Project, objecting to the approval of the Project. PETITIONERS, their
21 members/citizens/elected officials, other public agencies, other organizations, and members of
22 the public raised each of the claims presented in this petition prior to the close of the public
23 hearing on the approval of the Project.

24 51. PETITIONERS have complied with the requirements of Public Resources Code section
25 21167.5 by mailing written notice of the commencement of this action to Respondent California
26 High Speed Rail Authority before filing this Petition and Complaint. A copy of that notice, with
27 proof of service, is attached hereto as Exhibit B.

1 52. Pursuant to Public Resources Code Section 21167.7, PETITIONERS have provided a
2 copy of this Petition and Complaint to the California Attorney General. A copy of the
3 accompanying notice and proof of service are attached hereto as Exhibit C.

4 53. PETITIONERS have no plain, speedy or adequate remedy in the ordinary course of law.
5 Unless this Court grants the requested writ of mandate to require CHSRA to rescind its approval
6 of the Project and certification of the FRPEIR, CHSRA's actions in violation of CEQA will
7 remain in effect.

8 54. If CHSRA is not enjoined from moving forward to implement the Project and from
9 undertaking acts in furtherance thereof, and specifically releasing one or more program-level
10 Draft EIRs, PETITIONERS will suffer irreparable harm for which there is no adequate remedy
11 at law in that CHSRA will move towards constructing a high speed train system including the
12 Pacheco Pass Alignment, with attendant significant environmental impacts, without having first
13 conducted adequate environmental review, which might have avoided or mitigated some or all of
14 those impacts. In addition, CHSRA will have illegally expended public funds towards the
15 improper release and publication of project-level EIRs for the Project prior to there being an
16 adequate certified PEIR for the Project. In addition, in doing so CHSRA will have caused
17 irreparable harm by forcing PETITIONERS and other public agencies, organizations, and the
18 public to spend time, effort and money to review and provide comments on the project-level
19 Draft EIRs. This time, effort, and money will have been irreparably wasted because those Draft
20 EIRs are invalid; being based on a programmatic EIR and program-level decision that are also
21 invalid.

22 **CHARGING ALLEGATIONS**

23 **FIRST CAUSE OF ACTION**

24 **Violation of CEQA and CEQA Guidelines – Certification of Legally Inadequate Environmental 25 Impact Statement.**

26 55. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
27 through 54 as though fully set forth herein.

1 56. The Project required discretionary approval by CHSRA and was therefore a project under
2 CEQA.

3 57. The Project did not qualify for any CEQA exemption and therefore required
4 environmental review under CEQA.

5 58. CHSRA was the lead agency for environmental review of the Project under CEQA.

6 59. CHSRA determined that the Project had potential to cause significant adverse
7 environmental impacts, and therefore determined to prepare a programmatic EIR for the Project.

8 60. Under Public Resources Code §21092.1 and under *Laurel Heights Improvement Assn. v.*
9 *Regents of University of California* (1993) 6 Cal.4th 1112, CHSRA had a duty to recirculate and
10 respond to comments on any significant new information added to the EIR after its previous
11 circulation for public review and comment.

12 61. CHSRA had a duty under CEQA to certify that the FRPEIR for the Project satisfied all
13 requirements under CEQA. CHSRA violated this duty by certifying the FRPEIR for the Project
14 when the FRPEIR was deficient in the following respects, many of which are described in
15 greater detail in a comment letter on the FRPEIR submitted to CHSRA at the final public
16 hearing, a copy of which is attached as Exhibit D¹ and incorporated herein by this reference:

Count One: Inadequate Project Description

17 62. An EIR is required to include an adequate description of the Project being considered.
18 The description must be accurate and must contain sufficient detail to allow the reader of the EIR
19 to understand the nature of the Project and its salient characteristics. The project description in
20 the FRPEIR was inadequate because it included inaccurate ridership and revenue figures that
21 were derived using a defective and previously-undisclosed ridership/revenue model. The
22 defective and inaccurate ridership and revenue information included as part of the project
23 description in the FRPEIR resulted in the CHSRA not being able to make accurate and informed
24 choices among various project alternatives and in not being able to properly or accurately
25 determine the financial feasibility of various project alternatives and mitigation measures. In

26 _____
27 ¹ The UCB ITS study, attached to the comment letter, is not included in the attachment to this
28 Petition. It is, however, included in the administrative Record.

1 addition, the defective ridership and revenue information resulted in the CHSRA not being able
2 to make an accurate and proper determination of whether the Project could meet the revenue
3 requirements set by Proposition 1A. As a consequence, CHSRA could not properly determine
4 whether the approved Project met the purpose and need for the Project. Accordingly, for all
5 these reasons, the inadequate and inaccurate project description requires that the approval of the
6 Project and the certification of the FRPEIR be set aside.

7 **Count Two: Failure to Fully Disclose and Adequately Analyze the Project’s Significant**
8 **Environmental Impacts.**

9 63. The FRPEIR fails to fully disclose or adequately analyze or mitigated the Project’s
10 significant impacts associated with moving its right-of way eastward outside of the right-of-way
11 owned by the Union Pacific Railroad (“UP”) in the area between San Jose and Gilroy. More
12 specifically, the FRPEIR failed to disclose, adequately analyze, or mitigate:

- 13 • The significant traffic impacts created by the removal of two lanes of the Monterey
14 Highway in order to accommodate the HSR right-of-way. These traffic impacts
15 would affect not only the Monterey Highway itself but also numerous other streets
16 and highways in the area surrounding the Monterey Highway;
- 17 • public health and safety impacts due to the potential for accidents or derailments on
18 the UP freight line or the Monterey Highway and subsequent collision of high speed
19 trains with freight cars or vehicles deposited as a result within the HSR right-of-way;
- 20 • displacement of residents and businesses, property impacts, and loss of agricultural
21 land through the relocation of the Project right-of-way eastward out of the UP right-
22 of-way, as well as additional undisclosed land use, property, and displacement
23 impacts from having to further shift the Project right-of-way in order to accommodate
24 federally required safety buffers between the Project right-of-way and the adjoining
25 rail and highway rights-of-way;
- 26 • Increased noise, vibrational, and air quality impacts caused by moving the Project
27 right-of-way eastward out of the UP or UP-shared right-of-way and concomitantly
28 moving the right-of-way for the Monterey Highway eastward, closer to adjoining
29 residences, businesses, schools and other facilities;

- Construction impacts caused by the need to move the Monterey Highway eastward in order to accommodate the eastward movement of the Project right-of-way out of the UP or UP-shared right-of-way.

64. The FPEIR/S fails to fully disclose or adequately analyze or mitigate the Project's significant impacts on jurisdictions it will traverse, including specifically cities on the San Francisco Peninsula bordering on the Caltrain right-of-way. More specifically, the FRPEIR failed to disclose or analyze the increased severity of impacts over those disclosed in the prior 2007 DPEIR/EIS due to new information and project changes resulting from project-levels studies undertaken and completed after the circulation of the prior 2007 DPEIR/EIS. These changes included: increasing the width of Project right-of-way expected to be needed along the Peninsula and refining the possible vertical alignment for the Project along the Peninsula, and more specifically eliminating the option for the Project to run in a tunnel and specifying an elevated alignment for portions of the Project. As a result, the FRPEIR failed to adequately disclose, analyze, or mitigate the following significantly increased impacts:

- noise, air quality, and vibration impacts on portions of the jurisdictions near the Caltrain right-of-way from the construction and operation of the Project;
- land use impacts in dividing existing communities further visually and physically dividing communities by the widened and partially elevated structures along the high speed rail right-of-way;
- displacement of additional residents and businesses beyond what had been addressed in the FPEIR/EIS due to the widening of the Project right-of-way;
- increased impacts through the destruction of existing vegetation, including many more mature trees, along the proposed Pacheco Pass alignment;
- increased visual impacts from elevated structures and soundwalls;
- additional traffic impacts due to lane removals disclosed by the Supplemental Alternatives Analyses Reports, issued after the circulation of the prior FPEIR. These lane closures were neither identified, discussed, nor analyzed in the FRPEIR;

- Blight-inducing impacts through the placement of the alignment on elevated structures through downtown business districts and residential districts along the Project right-of-way, as well as through severance damage caused to commercial and industrial properties adjoining the right-of-way that will lose access to UP freight service and therefore become unusable.
- Alternatively, the increased secondary air quality and energy impact caused by properties losing access to UP freight service and therefore having to switch to being serviced by diesel trucks consuming larger quantities of diesel fuel than trains and emitting larger quantities of diesel exhaust fumes..

Count Three: The FRPEIR Failed to Include an Adequate Analysis of Project Alternatives.

65. Under CEQA, an EIR must include an adequate analysis of a reasonable range of feasible project alternatives.

66. In addition to the statutorily-mandated no project alternative, the prior 2007 DPEIR/EIS had included two basic alignment alternatives, Pacheco Pass and Altamont Pass, although each of these alignment alternatives included numerous sub-alternatives for various portions of the route. Both of these sets of alternatives, however, required use of UP or UP-shared right-of way.

67. The Court's Final Judgment and writ of Mandate in the prior case, *Town of Atherton et al. v. California High-Speed Rail Authority*, required CHSRA, in revising the prior PEIR, to address the inability of CHSRA to use UP or UP-shared right-of-way.

68. In response, the FRPEIR shifted the proposed Pacheco alignment Project alternative right-of-way between San Jose and Gilroy eastward, out of the adjoining UP right-of-way. However, the FRPEIR did not change the alignment of that Project right-of-way between San Francisco and San Jose, where that right-of-way is shared by UP freight service and UP has trackage rights which include a veto power over any intercity rail service over that right-of-way.

69. Despite the unavailability of UP right-of-way, making virtually all of the remaining alternatives analyzed in the prior PEIR infeasible, the FRPEIR considered only one other alternative, an Altamont alternative that simplistically attempted to shift the Project alignment out of the way of the adjoining UP right-of-way. Unsurprisingly, such a simple-minded approach was found infeasible.

1 70. In a comment letter submitted on the DRPEIRM, some of the PETITIONERS proposed a
2 new Altamont alternative that not only feasibly avoided virtually all of the UP right-of-way, but
3 also dramatically reduced the impacts on urban areas compared to all previous Altamont and
4 Pacheco alignment alternatives. Rather than provide a detailed analysis of this new alternative,
5 the FRPEIR inaccurately asserted that the new alternative was not significantly different in its
6 impacts and technical problems from the Altamont alternatives analyzed in the previous 2007
7 DPEIR and dismissed the alternative. However, this determination was not based on substantial
8 evidence in the record and was therefore invalid.

9 71. The FRPEIR's analysis of its chosen Pacheco alignment alternative ignored the UP's
10 trackage rights over the Caltrain right-of-way between San Francisco and San Jose. It
11 specifically ignored the provision contained in the trackage agreement between UP (as successor
12 in interest to the Southern Pacific Transportation Company) and Caltrain that required UP
13 approval for any intercity passenger rail service over the Caltrain right-of-way.

14 72. Not only has UP not given its approval for CHSRA to operate intercity passenger rail
15 service using the Caltrain right-of way, but UP has submitted one or more letters to CHSRA
16 indicating its objections, on multiple grounds, to CHSRA using the Caltrain right-of-way for
17 high-speed train operation, thus raising a strong likelihood that it will refuse to approve
18 CHSRA's use of the Caltrain right-of-way and that such use will therefore be infeasible.

19 73. In spite of these facts, the FRPEIR contains no discussion of how CHSRA will deal with
20 the refusal of UP to allow the Caltrain right-of-way to be used for the Project. Indeed, with this
21 high probability of UP refusal to allow use of the Caltrain right-of-way, it appears that the
22 FRPEIR contains absolutely NO feasible alternatives. Nevertheless, and despite the substantial
23 evidence to the contrary and the lack of contradicting evidence, CHSRA found the Pacheco pass
24 alternative using the Caltrain right-of-way to be feasible and chose that alignment for the Project.

25 74. The alternatives analysis was also defective because it included ridership and revenue
26 information for the various alternatives analyzed that was derived using a defective and
27 previously-undisclosed ridership/revenue model. The defective ridership revenue modeling led
28 the CHSRA to conclude that in order to generate the ridership needed to support the Project, it

1 was necessary to have very frequent service. This, in turn, led CHSRA to determine that it was
2 necessary to have two tracks dedicated to high-speed rail service on the San Francisco Peninsula,
3 which in turn led CHSRA to require a four-track minimum configuration and reject a two or
4 three-track configuration that could have avoided or reduced some of the Project's significant
5 impacts. In addition, as a result of the inaccurate ridership and revenue information provided for
6 the various alternatives, the EIR failed to provide the CHSRA and the public with accurate
7 information on the financial feasibility of the different alternatives as well as accurate
8 information to use in comparing the desirability of different alternatives and their ability to meet
9 the legal requirements for the Project under Proposition 1A.

10 75. The FRPEIR's inaccurate and incomplete analysis of project alternatives violated
11 CEQA's requirements that an EIR include analysis of a reasonable range of feasible project
12 alternatives that might avoid one or more of the project's significant impacts and that the
13 discussion of project alternatives provide the decision makers and the public the information
14 needed to make an informed decision. Accordingly, the approval of the Project and the
15 certification of the FRPEIR must be set aside.

16 **Count Four: Failure to Adequately Respond to Comments on the DRPEIR**

17 76. An EIR must include adequate written responses to all comments, both oral and written,
18 received by the lead agency during the public comment period. The FRPEIR was inadequate
19 because the responses to many of the comments received by the lead agency during the public
20 comment period were inadequate. In many cases, the responses were perfunctory or conclusory,
21 and in other cases the responses were not supported by substantial evidence. Accordingly, the
22 approval of the Project and the certification of the FRPEIR must be set aside.

23 **SECOND CAUSE OF ACTION**

24 **Violation of CEQA and CEQA Guidelines – Failure to recirculate DPEIR/S in response to new**
25 **information and/or changed circumstances**

26 77. PETITIONERS hereby reallege and incorporate by reference the allegations in the
27 preceding paragraphs 1 through 76 inclusive as though fully set forth herein.

1 78. CEQA requires that a draft EIR be recirculated for an additional round of public
2 comment if changes to the document after the close of the previous comment period result in the
3 addition of significant new information. In addition, recirculation is required if new
4 circumstances have arisen after the close of the previous public comment period that would
5 require substantial revision to the EIR.

6 79. CHSRA violated its duty under CEQA by refusing to recirculate the DRPEIRM for
7 public comment after changes to the EIR, and specifically comments received by CHSRA on the
8 DRPEIRM, resulted in addition of significant new information. This new information included:

- 9 • Evidence that the ridership/revenue model used to obtain the data included in the prior
10 2007 DEIR/EIS was not the model made available to the public during the review period
11 for the 2007 DPEIR/EIS, and that the model used to obtain the data contained major
12 flaws that rendered the data obtained from it untrustworthy;
- 13 • Significant traffic impacts on roadways near the Monterey Highway;
- 14 • Significant noise and air quality impacts along the San Francisco Peninsula and in the
15 area from San Jose south to Gilroy;
- 16 • Significant visual, land use, and blight-inducing impacts from the choice of an elevated
17 structure for portions of the San Francisco Peninsula;
- 18 • A new alternative proposal that could substantially reduce Project impacts, but which
19 CHSRA chose not to study or adopt.

20 80. CHSRA violated its duty under CEQA by refusing to recirculate the DRPEIRM for
21 public comment after this new information was made available. Accordingly, the approval of
22 the Project and the certification of the FRPEIR must be set aside.

23 **THIRD CAUSE OF ACTION**

24 **Violation of CEQA and CEQA Guidelines – Failure of CEQA Findings to be Supported by** 25 **Substantial Evidence**

26 81. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
27 through 80 inclusive as though fully set forth herein.

28 82. CEQA requires that an agency approving a Project for which an EIR was prepared and
29 significant impacts were identified adopt findings explaining and justifying its actions. (Public

1 Resources Code §21081.) Those findings must be supported by substantial evidence in the
2 record. CHSRA violated this duty to prepare and approve adequate CEQA findings in support of
3 its decision to approve the Project in that the findings were not supported by substantial
4 evidence. Accordingly, the approval of the Project must be set aside.

5 **FOURTH CAUSE OF ACTION**

6 **DECLARATORY RELIEF – Code of Civil Procedure §1060**

7 83. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
8 through 82 as though fully set forth herein.

9 84. An actual controversy and dispute exists between PETITIONERS and CHSRA regarding
10 the Project approval’s compliance with CEQA and the CEQA Guidelines. PETITIONERS
11 allege that the Project approval failed to comply with CEQA and/or the CEQA Guidelines, while
12 PETITIONERS are informed and believe, and on that basis allege, that CHSRA believes that the
13 Project approval did fully comply with both CEQA and the CEQA Guidelines.

14 85. PETITIONERS seek a judicial declaration that the Project approval failed to comply with
15 the requirements of CEQA and/or the CEQA Guidelines.

16 86. An actual controversy and dispute exists between PETITIONERS and CHSRA regarding
17 the FRPEIR’s compliance with CEQA and the CEQA Guidelines. PETITIONERS allege that
18 the FRPEIR failed to comply with CEQA and/or the CEQA Guidelines, while PETITIONERS
19 are informed and believe, and on that basis allege, that CHSRA believes that the FRPEIR did
20 fully comply with both CEQA and the CEQA Guidelines

21 87. PETITIONERS seek a judicial declaration that FPEIR/S failed to comply with CEQA
22 and/or the CEQA Guidelines.

23 88. An actual controversy and dispute exists between PETITIONERS and CHSRA regarding
24 the adequacy of the CEQA findings made by CHSRA in support of the Project approval.
25 PETITIONERS allege that said findings were invalid because they were not supported by
26 substantial evidence in the record, while PETITIONERS are informed and believe, and on that
27 basis allege, that CHSRA believes that said findings were fully adequate and valid.

1 89. PETITIONERS seek a judicial declaration that the CEQA findings made by CHSRA in
2 support of its approval of the Project were invalid because they were not supported by
3 substantial evidence in the record.

4 **FIFTH CAUSE OF ACTION**

5 **INJUNCTIVE RELIEF – Code of Civil Procedure §526a**

6 90. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
7 through 89 as though fully set forth herein.

8 91. Code of Civil Procedure Section 526a allows any taxpayer to file an action for injunctive
9 relief to prevent the illegal or wasteful use of public funds. Under the caselaw for this statute,
10 and specifically under *California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th
11 1264, 1281, an action for injunctive relief under CCP §526a may be brought against a state
12 agency.

13 92. PETITIONERS, and specifically PCL, CC-HSR, and RESIDENTS on behalf of their
14 members, and PATRICIA LOUISE HOGAN-GIORNI, all of whom are taxpayers within and to
15 the State of California, allege that CHSRA intends to act illegally in seeking to complete and
16 release for public comment and review program-level EIRs for the Project, despite the fact that
17 the FRPEIR is invalid and under challenge through this litigation.

18 93. CHSRA's action in moving ahead to release project-level environmental review
19 documents without first demonstrating the validity of the FRPEIR is in violation of CEQA, and
20 specifically of Public Resources Code §21094. (*See, Friends of the Santa Clara River v. Castaic*
21 *Lake Water Agency* (2002) 95 Cal.App.4th 1373.) The release of the project-level EIRs may
22 therefore be enjoined as involving the illegal expenditure of public funds.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PETITIONERS pray for relief as follows:

- 25 1. For this Court's peremptory writ of mandate ordering CHSRA to:
26 (a) vacate and set aside its determinations approving the Project, including its
27 determination to choose the Pacheco Pass alignment for the Project;

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(b) vacate and set aside its certification of the FRPEIR for the Project; remanding the Project and its environmental review under CEQA to CHSRA for reconsideration in accordance with this Court's determination and final judgment.

2. For this Court's temporary restraining order and preliminary injunction restraining CHSRA, its agents, servants and employees, and all others acting in concert with it or in its behalf, from taking any action to move forward on implementing the Project, and specifically restraining the above-referenced actors from releasing any project-level environmental documents for public review, pending a final decision on the merits by this Court.

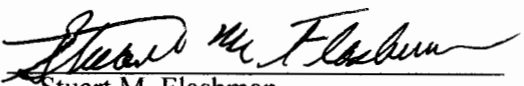
3. For this Court's permanent injunction restraining CHSRA, its agents, servants and employees, and all others acting in concert with it or in its behalf, from undertaking any activity or activities in furtherance of the Project until CHSRA has fully complied with this Court's writ of mandate and judgment and taken all required actions that may be necessary to bring the FPEIR and all project approvals into compliance with CEQA, Code of Civil Procedure §§ 526a and 1085, and all other requirements of law.

4. For this Court's declarations that:
- a. the Project approval violated CEQA and/or the CEQA Guidelines as set forth in this Petition and Complaint;
 - b. the certified FRPEIR for the Project failed to meet the requirements of CEQA and/or the CEQA Guidelines; and
 - c. the CEQA findings for the Project approval were not supported by substantial evidence in the record.

- 5. For costs of suit;
- 6. For an award of attorneys' fees under C.C.P. §1021.5 or other applicable basis; and
- 7. For such other equitable and/or legal relief as the Court considers just and proper.

DATED October 2, 2010

Law Offices of Stuart M. Flashman
Attorney for Petitioners and Plaintiffs

By: 
Stuart M. Flashman