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5 JOHN TOS; AARON FUKADA;
AND COUNTY OF KINGS

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Superior Court Of California,
Sacramento
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By _____, Deputy
Case Number:

COUNTY IS EXEMPT FROM 13519
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SECTION 6103

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

11 JOHN TOS, AARON FUKADA; AND
COUNTY OF KINGS, A POLITICAL
12 SUBDIVISION OF THE STATE OF
CALIFORNIA,

13 Plaintiffs,

14 v.

15 CALIFORNIA HIGH SPEED RAIL
16 AUTHORITY, CHIEF EXECUTIVE
OFFICER, ROELOF VAN ARK;
17 GOVERNOR JERRY BROWN;
SENATOR MARK LENO, CHAIRMAN,
18 JOINT LEGISLATIVE BUDGET
COMMITTEE; STATE TREASURER,
19 BILL LOCKYER; DIRECTOR OF
FINANCE, ANA MATASANTOS;
20 SECRETARY (ACTING) OF BUSINESS,
TRANSPORTATION AND HOUSING,
21 TRACI STEVENS; STATE
CONTROLLER, JOHN CHIANG; AND
22 DOES I-V, INCLUSIVE,

23 Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY
RELIEF; COMPLAINT BY
TAXPAYERS/INTERESTED PARTIES
UNDER CODE OF CIVIL PROCEDURE
SECTION 526a TO PREVENT
COMMISSION OF ILLEGAL ACT;
REQUEST FOR PERMANENT
INJUNCTION

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24
25 JURISDICTION AND VENUE

26 This court has jurisdiction since the action seeks to prevent a state agency and state
27 officials from committing illegal acts and to prevent the use of state funds for illegal purposes.
28

RC1/6173984.1/CM3

- 1 -

COMPLAINT FOR DECLARATORY RELIEF

BY FAX

1 Venue is proper since suits against the California High Speed Rail Authority (“CHSRA”) are
2 required by law to be filed in the County of Sacramento.

3
4 **IDENTITY OF THE PLAINTIFFS**

5 1. Plaintiff County of Kings is a political subdivision of the State of California,
6 organized and existing under the laws of this state. Plaintiff John Tos is a farmer and resident of
7 Kings County, California. Plaintiff Aaron Fukuda is also a resident of Kings County, California.
8 Plaintiffs Tos and Fukuda are taxpayers of the state, having paid for many years state income,
9 sales, and property taxes. They are eligible to sue under CCP §526a and sue under that statute.

10 **GIST OF PLAINTIFFS' CLAIMS**

11 2. All plaintiffs claim that the Central Valley high speed rail project Merced to
12 Bakersfield segment (Central Valley HSR project) is NOT ELIGIBLE to receive financial
13 support from Prop 1A bond funds and that it would be illegal under Prop 1A and CCP §526a, to
14 disburse or distribute Prop 1A bond funds to CHSRA for the purpose of constructing a purported
15 HSR system in the Central Valley. The plaintiffs will seek in this action to have the court
16 declare that such use of Prop. 1A funds would be illegal and that all defendants must be prevented
17 from doing so.

18 **IDENTITY OF DEFENDANTS**

19 3. The defendants are principally persons and agents of the State who, under Prop
20 1A, have a voice and decision-making authority on whether bond funds under Prop 1A should be
21 allowed to be used for the purported Central Valley HSR project and to authorize release of said
22 funds to CHSRA for the purpose of constructing a purported HSR system in the Central Valley of
23 California. The defendants include: Governor Jerry Brown; Senator Mark Leno, Chairman, Joint
24 Legislative Budget Committee; Treasurer Bill Lockyer; Director of Finance, Ana Matasantos;
25 State Controller, John Chiang; Secretary (acting) of Business, Transportation and Housing, Traci
26 Stevens. The CHSRA and its Chief Executive Officer, Roelof van Ark, are also sued because
27 they seek to gain control of such Prop 1A funds for such Central Valley construction and that
28 such use would be illegal under Prop 1A.

1 **PROPOSITION 1A – PURPOSE/BACKGROUND**

2 4. In the year 2008, the voters of the state of California passed Prop 1A (which
3 incorporates and includes AB 3034 and various sections of the P.U.C. and the Streets and
4 Highways Code). Prop 1A authorized the construction of a true HIGH SPEED RAIL SYSTEM
5 (“HSRS”) in California. Prop 1A, in numerous provisions, provided that a HSRS was required to
6 be AN ELECTRIFIED SYSTEM with all components required for a true high speed rail system,
7 as such.

8 5. The voters of the State of California, in passing Prop 1A , never intended that
9 Prop 1A's \$9 billion in bond construction funds would be used for anything less than a true HSR
10 electrified system, as such; the voters specifically never intended that Prop 1A bond funds would
11 be used "preliminarily" to build a non-electrified substantially "conventional" rail system, with an
12 electrified HSR system to be constructed at a later period. No such allowance or permission for
13 such a so-called phased system is contained in Prop 1A.

14 6. Defendant CHSRA intends to use Prop 1A bond funds for the purpose of building
15 initially a NON ELECTRIFIED RAIL SYSTEM/SEGMENT, preliminary to, at some later time,
16 actual construction of an electrified HSR system, as such.

17 7. The use of Prop 1A bond funds for such purposes for preliminary construction of
18 what is a non-electrified rail segment, and which does not contain all the components of a true
19 HSR system, as such, is illegal under, and violates, Prop 1A.

20 8. Unless the defendants are prevented from obtaining access to Prop 1A bond funds,
21 these funds will be exhausted and spent on constructing a non electrified rail system that is
22 substantially conventional in nature. Building a conventional system as "preliminary" to a true
23 HSR electrified system has always been the intent of defendants, including defendant CHSRA;
24 such a conventional system may be permitted under federal law and the applicable federal statute
25 (ARRA) , since such a conventional non electrified and non HSR system may have "independent
26 utility" under federal law; but no such concept of "independent utility" exists under Prop 1A,
27 which is more restrictive than federal law and which predated federal law and was not enacted to
28 mirror federal law. Prop 1A absolutely requires that Prop 1A bond funds be spent to construct,

1 FROM THE OUTSET, an electrified HSR system with all the components required for a high
2 speed rail system, as such. The sale and disbursement of bonds under Prop 1A is governed by
3 state law (Prop 1A) and not federal law.

4 9. The defendants have evidenced an intent to violate Prop 1A in other material and
5 fundamental respects, namely: Defendant CHSRA represented to the voters that construction of a
6 statewide true HSR system would be completed by the year 2020; instead the defendants plan and
7 intend NOT to have construction completed until the year 2032. Prop. 1A further requires that
8 the trains that are part of the system must run at speeds of 220 mph; instead, defendants plan and
9 intend that the trains will run at speeds substantially lower than that, which is a violation of Prop.
10 1A; because of this, CHSRA will never achieve the Prop. 1A objective that the trip from Los
11 Angeles to San Francisco must be done in 2 hours, 40 minutes; further, Prop. 1A requires that a
12 passenger boarding a train in Los Angeles/Anaheim must be able to travel to San Francisco
13 without making any change of trains. Defendants plan and intend that such passengers, upon
14 arriving in San Jose, WILL CHANGE TRAINS, taking a different vehicle for the trip to San
15 Francisco, which is a violation of Prop. 1A. All of such contemplated plans and contemplated
16 acts are illegal under Prop. 1A and make the Central Valley project INELIGIBLE for receipt of
17 Prop. 1A bond funds, in addition to the other reasons for ineligibility set forth above. There is a
18 further fundamental reason why the proposed central valley project violates Prop 1A: at its
19 Board meeting of November 3, 2011, defendant CHSRA announced that it was formally
20 approving what the "usable segment" under Prop. 1A would be, and approved a formal "funding
21 plan" for the project. But, the approval of these two important items cannot take place under
22 Prop. 1A until all environmental approvals under state law (CEQA) and federal law (NEPA) have
23 been obtained and the environmental process completed, and the CHSRA ". . . has completed all
24 necessary project level environmental clearances necessary to proceed to construction." This is
25 required under Prop. 1A (see Streets and Highways Code, sec. 2704.08 (c)(2) and sec. 2704.08
26 (c)(2)(k)). Plaintiffs allege specifically that such environmental requirements HAVE NOT BEEN
27 COMPLETED and that, therefore, the CHSRA action of November 3, 2011, in approving what
28 "usable segment" would be built and what the "funding plan" would be was an illegal action,

1 prohibited by Prop. 1A and its related statutes.¹ Plaintiffs ask the court to so declare. Despite all
2 the foregoing, demonstrating the illegality associated with using Prop 1A bond funds for the
3 Central Valley project, on November 3, 2011, at its board meeting, defendant CHSRA took the
4 position that it had fully complied with all Prop 1A requirements and was eligible to receive, and
5 desired to receive, Prop 1A bond funds for the Central Valley project.

6 10. The defendants intend to use the maximum amount permissible of Prop 1A bond
7 funds for the purpose of financing the construction of the Central Valley purported HSR project.
8 This potential use of such bond funds is imminent, since defendants plan to start construction in
9 the Central Valley by September, 2012.

10 11. Plaintiffs Tos and Fukuda sue under CCP 526a (taxpayer standing) to prevent the
11 commission of an illegal act by defendants, and plaintiffs seek declaratory relief from the court to
12 have the contemplated use of Prop 1A bond funds declared illegal and in violation of Prop 1A.
13 Plaintiff County has an interest in the litigation being pursued by Plaintiffs Tos and Fukuda who
14 are residents of Kings County; the Project conflicts with County's plans, policies and regulations
15 and such conflicts have not been resolved by the Authority who refuses to coordinate; Kings
16 County, therefore, has standing in this action. The purported HSR project will materially affect
17 many geographical areas of Kings County; the project will result in a decrease in value of the
18 land/property owned by many Kings County property taxpayers, on whom Kings County depends
19 for the funding of government services. Furthermore, the project, by traversing the lands of
20 hundreds of residents/farmers/ranchers in Kings County will make the provision of county
21 services, including emergency services, much more difficult, time-consuming, and expensive.
22 For example, many roads will be closed because of the purported HSR project, requiring county
23 transportation/emergency/police/ambulance/fire vehicles/personnel to travel many miles out of

24 ¹ Significantly, On November 10, 2011, Judge Michael P. Kenny, of the Sacramento Superior
25 Court, ruled that the entire EIR from San Francisco to Merced, which embraces the area where
26 CHSRA has chosen to build its "usable segment" (IOS) was DECERTIFIED by Judge Kenny and
27 has to be RECIRCULATED. See Town of Atherton, et al . v. CHSRA, et al, Sacramento
28 Superior Court Action No. 34-2008-8000022-CU-WM-GDS. This means that the
environmental work in the exact area where construction is proposed has to start over and is not
completed. The funding plan approved on November 3 by CHSRA is therefore invalid under
Streets and Highways Code, sec. 2704.08 (c)(2)(k).

1 their way to reach the destination where assistance is required. Therefore, plaintiff Kings County
2 has a sufficient interest in the Tos/Fukuda claim of illegality, and Kings County will be
3 sufficiently harmed to support a claim of legal standing in this action.

4 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF**

5 12. Plaintiffs incorporate paragraphs 1 through 11 as though fully set forth herein.

6 13. Declaratory relief is proper in order that the rights and obligations of the parties
7 can be ascertained and in order to prevent the commission of an illegal act , in light of the
8 imminent planned release and expenditure of billions of dollars by defendants.

9 14. The court should declare that: (1) The purported HSR project in the Central
10 Valley is NOT ELIGIBLE to receive funding/financial support from the \$9 billion bond fund
11 established by Prop 1A; (2) it would be illegal under Prop 1A to disburse Prop 1A bond funds to
12 CHSRA and to van Ark to be used in construction of the purported HSR project in the Central
13 Valley; (3) it would be illegal for any of the defendants to disburse or provide Prop 1A bond
14 funds to CHSRA for the purpose of using such funds for the construction of the purported HSR
15 project in the Central Valley.

16 **SECOND CAUSE OF ACTION: DECLARATORY RELIEF-- ILLEGAL TO PROVIDE**
17 **A SUBSIDY UNDER PROP 1A AND NO PROP 1A FUNDS CAN BE PROVIDED SINCE**
18 **A SUBSIDY WILL BE REQUIRED.**

19 15. Paragraphs 1 through 14 are hereby incorporated by reference as though fully set
20 forth herein.

21 16. Prop 1A makes the Central Valley INELIGIBLE to receive any Prop 1A bond
22 funds for construction of the purported HSR project IF an operating subsidy will be provided by
23 the local, state, or federal government.

24 17. Plaintiffs allege that when (and if) defendants' rail system becomes operational for
25 passengers , and assuming, arguendo, that at that time, it is a true HSR system with all the
26 components of a true HSR system, it will require a local, state, or federal operating subsidy. This
27 makes the project INELIGIBLE for Prop. 1A bond funds, and it would be illegal to provide Prop.
28 1A bond funds.

1 18. Accordingly, the court should declare that the HSR project proposed to be built, at
2 the stage when initial passenger service will commence, will require an operating subsidy,
3 thereby making the project ineligible for receipt of Prop 1A bond funding/financing.

4 **THIRD SECOND CAUSE OF ACTION; THE FUNDING PLAN OF THE DEFENDANT**
5 **CHSRA VIOLATES PROPOSITION 1A, AND THEREFORE NO PROP. 1A BOND**
6 **FUNDS CAN BE RELEASED FOR THE CENTRAL VALLEY PROJECT**

7 19. Paragraphs 1 through 18 are hereby incorporated by reference as though fully set
8 forth herein.

9 20. On November 1, 2011, defendant CHSRA announced and promulgated its
10 "Business Plan" for Phase I of the California HSR project. On November 3, 2011, the Board of
11 the CHSRA announced and approved what would be the "Usable Segment" of the project under
12 Prop. 1A and approved the "Funding Plan" for said usable segment.

13 21. Defendant CHSRA has chosen to use terminology in its Business Plan that is not
14 contained in Proposition 1A. For example, the Authority describes its construction work
15 "preliminary" to the construction of a true High Speed Rail (HSR) electrified segment as an
16 "Initial Construction Section" (ICS). As the foregoing paragraphs demonstrate, Prop. 1A ONLY
17 allows bond funds to be released for the construction of an actual HSR segment which is
18 electrified and contains all the components of a true HSR system; the proposed ICS, running from
19 south of Merced to north of Bakersfield is NOT such a true HSR segment and therefore is not
20 eligible to receive Prop. 1A bond funds.

21 22. But, defendant CHSRA then announced that after the ICS is finished,
22 preliminary to a true HSR system/corridor, the Authority will construct a "Usable Segment" and a
23 true HSR segment starting with the ICS and EITHER running to San Jose OR to the San
24 Fernando Valley in Southern California. The Authority describes such a segment as an "Initial
25 Operating Section" (IOS) and announced that THIS WOULD BE THE USABLE SEGMENT
26 MEETING THE REQUIREMENTS OF PROP 1A.

27 23. Prop. 1A requires that, at the very least, no bond funds can be released for
28 construction until and unless there is sufficient financing/funding immediately

1 available/accessible to enable completion of the "Usable Segment" which is proposed to be
2 constructed.

3 24. It would be a violation of Prop. 1A to release bond funds because the funding
4 requirements of Prop. 1A have not been met and cannot reasonably be met, and the funding
5 available is woefully short of the amount required under law.

6 25. The federal government/Department of Transportation has currently granted
7 approximately \$3 billion to defendant CHSRA for the Central Valley project. Prop. 1A states that
8 bond funds granted to a project under 1A can never exceed 50% of the funds to be spent
9 constructing the segment; in other words Prop. 1A will "match" existing federal grants (and any
10 other sources of funds), but no more than matching. ASSUMING, arguendo, that it is appropriate
11 to grant Prop. 1A bond funds, this means that, at most, there would only be approximately \$6
12 billion from the federal and state governments for the project (\$3B from the federal government
13 and \$3B from Prop 1A Bonds).

14 26. The cost of constructing a true HSR "Usable Segment" (called an Initial Operating
15 Section or IOS by the Authority) is more than \$30 billion, as documented in their Business Plan.

16 27. Therefore, the Authority only has 20% of what it must have before bond funds
17 under Prop 1A can be released. There are no other committed, obligated, or contracted funds, nor
18 are there any reasonable prospects for further funding from the federal, state, local, or private
19 sources that will in any way approach the \$30 billion required.

20 28. The intent of Prop 1A was to minimize the financial risk to the state associated
21 with the HSR project. This is why the law requires that enough money be in place and
22 immediately accessible before bond funds under 1A can be released. Otherwise, there would be a
23 serious risk of an uncompleted project with all the damages and financial harm associated
24 therewith, not only to the state but to the local communities impacted by the project. There would
25 also be the serious financial risk that the \$9 billion in Prop 1A bond funds would be depleted and
26 exhausted long before any true HSR corridor is even commenced.

27 29. This court should therefore declare that: the "Funding Plan" announced and
28 approved by the Authority on Nov. 3, 2011, is not in conformity with Prop 1A; that sufficient

1 funding/financing for construction of the "Usable Segment" approved by the Authority is not
2 present or accessible on a reasonably expeditious basis, and that therefore no bond funds can be
3 released under Prop 1A.

4 **FOURTH CAUSE OF ACTION: REQUEST FOR PERMANENT INJUNCTION**

5 30. Paragraphs 1 through 29 are hereby incorporated by reference as though fully set
6 forth herein.

7 31. Despite the foregoing illegalities of providing Prop 1A funding for the purported
8 Central Valley HSR project, defendants, and each of them, intend to attempt to gain access to
9 Prop 1A bond funds and to provide these funds to defendants CHSRA and van Ark for the
10 purpose of constructing such project.

11 32. Construction is scheduled to start in September, 2012.

12 33. If Prop 1A bond funds are released for this project, it would violate Prop 1A and
13 would be illegal; it would also exhaust the Prop 1A bond funds, making funding unavailable even
14 for a legitimate electrified HSR project in compliance with Prop 1A.

15 34. Unless the defendants are enjoined from disbursing and exhausting such bond
16 funds, irreparable damage will be done to the plaintiffs and to the state and its residents at large.


17 35. The defendants are the appropriate persons to enjoin, since they have the legal
18 authority to approve the sale, disbursement and use of Prop 1A bond funds to defendants
19 CHSRA and van Ark to spend on construction of the Central Valley HSR project.

20 **PRAYER FOR RELIEF**

- 21 1. For declaratory relief, as set forth above;
- 22 2. For a permanent injunction against defendants, as set forth above;
- 23 3. For a preliminary injunction as provided by law;
- 24 4. For costs of suit;
- 25 5. For attorney fees in the event the court rules that this matter has been brought in
26 the public interest and under the private attorney general theory.
- 27 6. For such other relief as the court deems just and proper.
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Dated: November 14, 2011

By: 
MICHAEL J. BRADY
Attorneys for Plaintiffs
JOHN TOS; AARON FUKADA; AND
COUNTY OF KINGS