

1 Stuart M. Flashman (SBN 148396)
2 5626 Ocean View Dr.
3 Oakland, CA 94618-1533
4 Telephone/Fax: (510) 652-5373
5 e-mail: stu@stuflash.com

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10 Attorney for Petitioner
11 Transportation Solutions Defense and Education Fund

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

10 TRANSPORTATION SOLUTIONS
11 DEFENSE AND EDUCATION FUND, a
12 California nonprofit corporation,

12 Petitioner

13 vs.

14 CALIFORNIA AIR RESOURCES BOARD,
15 an agency of the State of California, and
16 DOES 1-10, inclusive,

16 Respondents

No. 34-2014-80001974-CU-WM-GDS

Action under the California Environmental
Quality Act

Assigned for all purposes to Hon. Shelleyanne W.
L. Chang, Dept. 24

**PETITIONER'S MOTION TO STRIKE A
PORTION OF RESPONDENT'S OPPOSITION
BRIEF; SUPPORTING DECLARATION OF
AUTHENTICITY**

Date: March 17, 2017

Time: 10:00 AM

Dept. 24

Judge Hon. Shelleyanne W.L. Chang

Case Filed: June 23, 2014

Trial Date: March 17, 2017

21 Petitioner Transportation Solutions Defense and Education Fund ("Petitioner") hereby
22 moves the Court to strike that portion of Respondent California Air Resources Board's
23 Opposition Brief consisting of page 16 lines 18 through 22, the two sentences beginning,
24 "Specifically, the project-level EIR ..." and ending with, "...high-speed rail as it does here.
25 (RJN, Ex. 5).", and the entirety of footnote 4 at the bottom of that page. The reasons for this
26 motion are as follows:

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1 **I. THE OFFENDING LANGUAGE VIOLATES *WESTERN STATES PETROLEUM***
2 ***ASSN. V. SUPERIOR COURT.***

3 In *Western States Petroleum Assn. v. Superior Court* (“*Western States*”) (1995) 9
4 Cal.4th 559, the California Supreme Court squarely addressed the limits on evidence that may be
5 placed before the court in a mandamus challenge to a quasi-legislative act.¹ The court
6 determined that because only relevant evidence is admissible and to be relevant to the issue of
7 the validity of an agency’s quasi-legislative decision evidence must generally be contained in the
8 administrative record for that decision, evidence outside of the administrative record is, with
9 certain narrow exceptions, inadmissible. (*Id.* at pp. 564-565.)

10 More specifically, the court held that evidence that was not in existence at the time of the
11 agency’s decision can not, under any circumstances, be considered admissible evidence as to the
12 propriety of that decision. (*Id.* at p. 578; *see also Id.* at p. 573 fn.4 [judicial notice only proper if
13 the fact or document was either included in the administrative record or was otherwise placed
14 before the agency at the time it made its decision].)

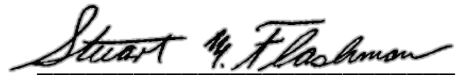
15 Here, ARB asks the Court to consider evidence that was neither included in the
16 administrative record nor placed before ARB when it approved the Updated Scoping Plan. ARB
17 asks that the Court take note of several lawsuits challenging the California High-Speed Rail
18 Authority’s (“CHSRA”) approval of the Fresno-Bakersfield segment of its high-speed rail
19 system. The administrative record contains absolutely no reference to these lawsuits. That is not
20 surprising. As the exhibits to the attached Declaration of Authenticity demonstrate, all of these
21 cases were filed in June 2014. The Administrative Record reflects that ARB gave final approval
22 to its Updated Scoping Plan on May 22, 2014. (1 AR 1-8.) None of these cases could have been
23 before ARB when it approved the Updated Scoping Plan because they were not yet in existence.
24 They are therefore also not properly before this Court, and reference to them should be stricken
25 from Respondent’s Opposition.

26 _____
27 ¹ While *Western States* arose in the context of a CEQA challenge, its holdings apply equally to
28 any action challenging a quasi-legislative decision that is decided based on an administrative
29 record. (*See, e.g., San Joaquin Local Agency Formation Com. v. Superior Court* (2008) 162
Cal.App.4th 159; *Abernathy Valley, Inc. v. County of Solano* (2009) 173 Cal.App.4th 42;
Sonoma County Water Coalition v. Sonoma County Water Agency (2010) 189 Cal.App.4th 33.)

1 ARB also asks the Court to take judicial notice of a letter submitted by TRANSDEF to
2 CHSRA as a comment on the draft Project EIR for that same Fresno-Bakersfield high-speed rail
3 segment. As Petitioner's Objections to Respondent's Request for Judicial Notice explains, that
4 letter is also not in the administrative record for this case – or even referenced therein. Nor can
5 ARB point to any evidence that it was placed before ARB at or prior to ARB's decision to
6 approve the Updated Funding Plan. For that reason, judicial notice of the letter must be denied.
7 Reference to the letter should therefore likewise be stricken from Respondent's Opposition.

8 Dated: February 22, 2017

9 Respectfully submitted,

10 

11 Stuart M. Flashman
12 Attorney for Petitioner

13
14 **DECLARATION OF AUTHENTICITY**

15 I, Stuart M. Flashman, hereby declare as follows:

- 16 1. I am an attorney licensed to practice in the State of California. I represent Petitioner
17 Transportation Solutions Defense and Education Fund in this case. I have personal
18 knowledge of the facts presented in this declaration and am competent to testify as to
19 them if called as a witness.
- 20 2. Exhibit A-D attached hereto are true and correct copies of the filed endorsed caption
21 pages of the following cases, as obtained from the petitioner(s) counsel in those cases:
- 22 • County of Kings et al. v. Cal. High-Speed Rail Authority (34-2014-80001861)
 - 23 • Dignity Health v. Cal. High-Speed Rail Authority (34-2014-80001865)
 - 24 • First Freewill Baptist Church v. Cal. High-Speed Rail Authority (34-2014-80001864)
 - 25 • City of Shafter v. Cal. High-Speed Rail Authority (34-2014-80001908)

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I declare under penalty of perjury under the laws of the State of California that the statements made in this declaration are true and correct. Executed on this 22nd day of February, 2017 in Oakland, California.


Stuart M. Flashman

Exhibit A

1 CHATTEN-BROWN & CARSTENS LLP
2 Douglas P. Carstens, SBN 193439
3 Josh Chatten-Brown, SBN 243605
4 Michelle N. Black, SBN 261962
5 2200 Pacific Coast Highway, Suite 318
6 Hermosa Beach, CA 90254
7 310.798-2400; Fax 310.798.2402
8 Email: dpc@cbcearthlaw.com

9 Attorneys for Petitioners County of Kings,
10 Citizens for California High Speed Rail Accountability,
11 Kings County Farm Bureau

12 COUNTY OF KINGS
13 Colleen Carlson, SBN 203120
14 Kings County Counsel
15 1400 W. Lacey Boulevard Bldg. 4
16 Hanford, CA 93230
17 559.582.3211; Fax 559.584.0865
18 Email: Colleen.Carlson@co.kings.ca.us

19 Attorney for Petitioner County of Kings

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE**

22 County of Kings, Citizens for California High)
23 Speed Rail Accountability, Kings County)
24 Farm Bureau)

25 Petitioners,

26 v.

27 California High-Speed Rail Authority, and)
28 DOES 1 through 20)

Respondents and Defendants.

and ROES 1 to 10;

Real Parties in Interest.

FILED
Superior Court Of California,
Sacramento

06/05/2014

amacias

By _____, Deputy

Case Number:

34-2014-80001861

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

File By Fax

Exhibit B

1 **GEORGE F. MARTIN (SB #51111)**
2 **BORTON PETRINI, LLP**
3 5060 California Avenue, 7th Floor
4 Bakersfield, California 93309
5 Telephone: (661) 322-3051
6 Facsimile: (661) 322-4628

7 Attorneys for Petitioner,
8 **DIGNITY HEALTH**

FILED
Superior Court Of California,
Sacramento

06/06/2014

awoodward

By _____, Deputy

Case Number:

34-2014-80001865

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE

9 **DIGNITY HEALTH,**
10 a California nonprofit public benefit
11 corporation,

12 Petitioner,

13 v.

14
15 **CALIFORNIA HIGH-SPEED RAIL**
16 **AUTHORITY, a public entity; and**
17 **DOES 1 through 20,**

18 Respondents.

Case No.

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

VIOLATIONS OF CEQA:

1. **CERTIFICATION OF A LEGALLY INADEQUATE ENVIRONMENTAL IMPACT REPORT**
2. **FAILURE TO RECIRCULATE REVISED DRAFT EIR**
3. **INADEQUATE CEQA REQUIRED FINDINGS; UNSUPPORTED STATEMENT OF OVERRIDING CONSIDERATIONS**

DECLARATORY RELIEF

INJUNCTIVE RELIEF

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21 Petitioner, DIGNITY HEALTH ("Petitioner"), alleges, as follows:

22 **PARTIES**

23 1. Petitioner is, and at all times herein mentioned was, a California
24 nonprofit public benefit corporation organized and existing under the laws of
25 the State of California. Petitioner's mission includes delivering high-quality,
26 affordable health services, advocating for the poor and disenfranchised, and
27 partnering with others in the community to improve the quality of life. Petitioner
28 acts to protect the public health and safety of those residing in the various areas

Exhibit C

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

1 JAMIE T. HALL (Bar No. 240183)
2 JULIAN K. QUATTLEBAM (Bar No. 214378)
3 CHANNEL LAW GROUP, LLP
4 207 E. Broadway, Suite 201
5 Long Beach, CA 90802-8824
6 Telephone: (310) 982-1760
7 Facsimile: (562) 394-1940

8 Attorneys for Petitioner,
9 FIRST FREE WILL BAPTIST CHURCH OF BAKERFIELD,
10 a California Nonprofit Religious Corporation

FILED
Superior Court Of California,
Sacramento
06/06/2014
awoodward
By _____, Deputy
Case Number:
34-2014-80001864

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE**

13 FIRST FREE WILL BAPTIST CHURCH OF
14 BAKERSFIELD, a California Nonprofit Religious
15 Corporation

16 Petitioner,

17 vs.

18 CALIFORNIA HIGH-SPEED RAIL
19 AUTHORITY, a public entity; and
20 DOES 1 through 20,

21 Respondents and Defendants.

22 and ROES 1 to 10;

23 Real Parties in Interest.

Case No.

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

VIOLATIONS OF CEQA:

- 1. CERTIFICATION OF A LEGALLY INADEQUATE ENVIRONMENTAL IMPACT REPORT
- 2. FAILURE TO RECIRCULATE REVISED DRAFT EIR
- 3. INADEQUATE CEQA REQUIRED FINDINGS; UNSUPPORTED STATEMENT OF OVERRIDING CONSIDERATIONS

DECLARATORY RELIEF

INJUNCTIVE RELIEF

BY FAX

Exhibit D

Fee: *exempt*
Per Page fee \$ *31.00*
Initials: *ag*

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MICHELLE OUELLETTE, Bar No. 145191
HOWARD B. GOLDS, Bar No. 112626
SARAH E. OWSOWITZ, Bar No. 202783
BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
P.O. Box 1028
Riverside, California 92502
Telephone: (951) 686-1450
Facsimile: (951) 686-3083

Attorneys for Petitioner/Plaintiff
CITY OF SHAFTER

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

ELECTRONICALLY RECEIVED
BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN, ON
JUN - 06, 2014
FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JUN 06 2014

ENDORSED
BY _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN- METROPOLITAN DIVISION, CIVIL UNLIMITED

CITY OF SHAFTER, a municipal
corporation,

Petitioner/Plaintiff,

v.

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

Respondent/Defendant.

S-1500-CV 282180 KCT

Judge:

(California Environmental Quality Act)

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
PUBLIC NUISANCE AND
DECLARATORY RELIEF**

[Code Civ. Proc., §§ 1085, 1094.5;
CEQA (Pub. Res. Code, §§ 21000 et seq.);
Public Nuisance (Civ. Code, §§ 3479, 3480,
3491, 3494; Code Civ. Proc., §§ 526, 731;
Shafter Municipal Code, § 8.28.010)]

[Deemed Verified Pursuant to Code of Civ.
Proc., § 446]