

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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Attorney for Petitioner
Transportation Solutions Defense and Education Fund

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

TRANSPORTATION SOLUTIONS DEFENSE
AND EDUCATION FUND,

Petitioner

vs.

CALIFORNIA AIR RESOURCES BOARD,

Respondent

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 OPENING BRIEF

Date: March 17, 2017

Time: 11:00 AM

Dept. 24

Judge: Hon. Shelleyanne W.L. Chang

Trial Date: March 17, 2017

Action Filed: June 23, 2014

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INTRODUCTION

In 2006, the California Legislature passed, and the Governor signed, AB 32, the California Global Warming Solutions Act of 2006¹ (hereinafter, “Act”). The Act is widely recognized as perhaps the most significant piece of California environmental legislation enacted in the last twenty years. The Act placed California on record in both recognizing the predicted adverse impacts that would be caused by human-induced climate-changing CO₂ emissions, the so-called “greenhouse effect,” and committing California to doing its part to reduce that climate change – particularly by reducing California’s emissions of CO₂, by far the most prevalent and most difficult to control “greenhouse gas”² (hereinafter, “GHG”).

The Act took a unique approach to its implementation. Unlike many other state and federal environmental laws, it did not simply empower an administrative agency to prepare and adopt implementing regulations with the force of law. (See, e.g., Surface Mining and Reclamation Act of 1975 [Public Resources Code § 2710 *et seq.*], Porter-Cologne Water Quality Control Act [Water Code § 13000 *et seq.*], Federal Clean Water Act [3 U.S.C. Sec. 1344 *et seq.*]) Nor, unlike the California Environmental Quality Act (“CEQA” [Public Resources Code § 21000 *et seq.*], did it empower an administrative agency to write up and approve formal guidelines with quasi-regulatory status. (See, e.g. *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (“*Friends of CSMG*”) (2016) 1 Cal.5th 937, 954 [CEQA Guidelines, while not explicitly implementing regulations, are entitled to great respect].)

Instead, the Act called for a two-pronged approach. One prong, as with other environmental laws, tasked Respondent California Air Resources Board (hereinafter, “ARB”) with developing regulations intended to help achieve the Act’s goals. (See, Health & Safety Code § 38560.5 [provisions for “early action” regulations], § 38530 [provisions for monitoring and regulating greenhouse gas emissions]; see also, *POET, LLC v. State Air Resources Bd.* (2013) 217 Cal.App.4th 1214 [challenge to ARB’s adoption of low carbon fuel standards].)

¹ Codified at Health & Safety Code § 38500 *et seq.*

² Greenhouse gases are those gases that, when released into the atmosphere, result in increased retention of solar energy, the so-called “greenhouse effect.” (See, 8 AR 04438 [definition/explanation of greenhouse effect].)

1 The second prong, however, tasked ARB with preparing and approving periodic “Climate
2 Change Scoping Plans” (hereinafter, “Scoping Plan”) to guide the Legislature in enacting
3 subsequent legislation, including specifically appropriations, to advance the Act’s aims. (Health
4 & Safety Code § 38561; *Association of Irrigated Residents v. State Air Resources Bd.* (“AIR”)
5 (2012) 206 Cal.App.4th 1487, 1490.) Perhaps the closest analogy to this second prong would be
6 a ship’s navigator plotting a course to guide the ship’s captain in steering the vessel towards its
7 eventual goal. As with a navigator’s course, the Legislature could be expected to rely heavily on
8 ARB’s judgment and its recommendations, but especially on its faithfulness to the directions the
9 Legislature had provided to it.

10 As is usual with such planning documents,³ ARB was required to complete CEQA review
11 of each Scoping Plan prior to approving it. (*See, AIR, supra*, 206 Cal.App.4th at 1493 [challenge
12 to ARB’s CEQA compliance in approving 2008 Scoping Plan].) This lawsuit challenges ARB’s
13 CEQA compliance in preparing its 2014 first update to the Scoping Plan (“Updated Scoping
14 Plan”). In addition, it asserts that inclusion of one specific project, the California high-speed rail
15 project, in that Updated Scoping Plan violated the Act itself and its requirements for Scoping
16 Plans. Based on these violations, Petitioner Transportation Solutions Defense and Education
17 Fund (“TRANSDEF”) asks that the Court issue a narrowly tailored writ of mandate requiring
18 ARB to rescind its approval of just that portion of the Updated Scoping Plan that identified
19 construction of the California high-speed rail system as a GHG Emissions Reduction Measure⁴
20 under the Act. TRANSDEF also asks that the writ of mandate require ARB to rescind its
21 certification of the CEQA Environmental Analysis (“EA”) for that Updated Scoping Plan.

23 ³ In 2008, the Legislature took a somewhat different approach in mandating that the California
24 High-Speed Rail Authority (“CHSRA”) prepare a preliminary funding plan to inform the
25 Legislature preparatory to appropriating bond funding for construction of a high-speed rail
26 segment. (*See, Streets & Highways Code § 2704.08(c); California High-Speed Rail Authority v.*
Sup. Ct. (2014) 228 Cal.App.4th 676.) There, however, the funding plans were to be preceded
27 by completion of all project-level environmental clearances for the segment(s) being proposed
28 for funding. (*Id.*, subsection (2)(K).)

29 ⁴ The Act calls for ARB to identify in its Scoping Plans measures that will achieve the maximum
technologically feasible and cost-effective reduction in GHG emissions prior to 2020. (Health &
Safety Code §38561(a). In this brief, those measures, as identified in the Scoping Plan, are
designated as “GHG Emissions Reduction Measures.”

1 **STATEMENT OF FACTS AND OF THE CASE**

2 **I. GENERAL BACKGROUND**

3 **A. WEATHER, CLIMATE, AND CLIMATE CHANGE**

4 Humans have been aware of weather and climate since before the beginning of recorded
5 history. In biblical times, weather and climate were considered part of God’s plan for the Earth,
6 and unusual catastrophic events, such as droughts and major floods, were considered “Acts of
7 God” (e.g., the great flood in Genesis; the recurrent “years of famine” in Exodus). As
8 civilization spread across the globe, weather and climate became increasingly important,
9 especially for trade across the seas. As a result, mariners studied the wind patterns and ocean
10 currents.

11 Starting with the “Enlightenment” in the eighteenth century, science developed as an
12 alternative worldview to simply accepting divine providence. Scientists studied the earth and its
13 history, and were puzzled to find fossils of ancient sea life in areas, such as the Central Valley,
14 now many feet above sea level. Over time, science recognized that there had been periods when
15 the polar ice caps had periodically expanded and contracted. When they expanded, glaciers
16 extended into the current temperate zones. These eras were called “ice ages.” When they
17 contracted, sea levels rose, creating inland seas in low-lying areas like the Central Valley. Thus
18 science recognized that cyclical worldwide climate change was a historic fact.

19 **B. HUMAN-INDUCED CLIMATE CHANGE**

20 As early as the nineteenth century, scientists such as John Tyndall in England and Svante
21 Arrhenius in Sweden had suggested that changes in the Earth’s atmospheric composition, and
22 particularly changes in the atmosphere’s content of carbon dioxide (“CO₂”) could result in a
23 “greenhouse effect,” where more of the Sun’s radiation reaching the Earth was kept in and
24 absorbed by the atmosphere. It was recognized that this could increase the Earth’s overall
25 average temperature, with major effects on climate. (See, 24 AR 13211; see also 14 AR 7123 *et*
26 *seq.* [Intergovernmental Panel on Climate Change (2013) Summary for Policymakers].)
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1 With advances in meteorology, climatology, and earth science in general, measurements
2 of climate and of atmospheric components became available for large parts of the Earth's recent
3 history. In particular, indirect measurements of atmospheric CO₂ content (e.g., in arctic and
4 glacial ice core drillings) showed that while there had been periodic variations in atmospheric
5 CO₂ concentrations through geologic time, reflected in the various ice ages, there had been a
6 rapid and unprecedented rise in CO₂ content since the nineteenth century. This was strongly
7 correlated with an equally unprecedented rise in global average temperatures and related
8 phenomena like glacial retreat, polar icecap melting, and sea level rise. (See, e.g., 9 AR 5110; 13
9 AR 6888; 14 AR 7123 *et seq.*, 7579; 48 AR 27078, 27085.) As early as 1966, scientists were
10 publishing papers evaluating various influences on climate change, including anthropogenic
11 (human-induced) increases in atmospheric CO₂ levels, primarily from the burning of fossil
12 fuels.⁵ On the other hand, some scientists were predicting, based on other factors, an overall
13 cooling of the Earth. Not until the 1990's did a scientific consensus develop that increased
14 anthropogenic CO₂ levels were causing a significant greenhouse effect, resulting in global
15 climate change.

16 C. GOVERNMENTAL EFFORTS TO ADDRESS CLIMATE CHANGE

17 As the scientific evidence implicating anthropogenic climate change and delineating its
18 potential consequences accumulated, governments around the world began to discuss the need to
19 take actions to address the threat presented. In 1997, a worldwide meeting of governmental
20 representatives adopted the Kyoto Protocols, which set legally binding greenhouse gas emissions
21 targets for industrialized countries. (13 AR 6888.) It also proposed methods for meeting those
22 targets. (*Id.*) The Kyoto Protocols took effect in 2004. (*Id.*) One of the concepts that the Kyoto
23 Protocols crystalized was recognition of the central role of CO₂ in anthropogenic climate change.
24 While other gases, including methane and chlorofluorocarbons (formerly widely used as
25 refrigerant gases) are highly potent in their greenhouse effect, some are short-lived and others
26

27
28 ⁵ See, e.g., Mitchell *et al*, *Climate Change*, World Meteorological Organization (1966) [cited at
29 AR 7975].

1 relatively easily controlled or eliminated. In terms of amounts and difficulty of control, CO₂ is
2 by far the biggest problem. (13 AR 6889.)

3 The European Union and other countries have established so-called cap and trade
4 programs to reduce GHG emissions.⁶ Pioneered by the U.S. federal Clean Air Act, these laws
5 establish a “cap” on total pollutant emissions, but allow industries releasing the pollutant
6 flexibility in keeping total emissions under the cap. Thus an industry that finds a highly cost-
7 effective way of reducing polluting emissions can sell its excess reduction in pollutants to others
8 having more difficulty. Over time, the cap is gradually lowered, decreasing the amount of
9 pollutant released. In this way, a cap and trade system maximizes economic efficiency by
10 incentivizing the most cost-effective ways of reducing pollutant emissions. (See, 50 AR 27811-
11 27812.) The U.S., however, has yet to implement a national approach to meeting the limits set
12 by the Kyoto Protocols and subsequent pacts.

13 **II. AB 32, THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006.**

14 In 2006, the Legislature, alarmed by the potential effects climate change would have on
15 California and the lack of regulatory action at the national level, enacted AB 32, the California
16 Global Warming Solutions Act.⁷ The Legislature found that:

17 (a) Global warming poses a serious threat to the economic well-being, public
18 health, natural resources, and the environment of California. The potential adverse
19 impacts of global warming include the exacerbation of air quality problems, a
20 reduction in the quality and supply of water to the state from the Sierra snowpack,
21 a rise in sea levels resulting in the displacement of thousands of coastal businesses
22 and residences, damage to marine ecosystems and the natural environment, and an
increase in the incidences of infectious diseases, asthma, and other human health-
related problems. (Health & Safety Code § 38501.)

23 That same statutory section also made several statements concerning the Legislature’s
24 intent in enacting AB 32. Perhaps most relevant here, the section stated:

25
26 _____
27 ⁶ Other alternative approaches include direct regulation of GHG levels and levying a tax on GHG
emissions.

28 ⁷ It should be noted that since then, the scientific community has opted to refer to the issue as
29 global climate change rather than global warming, as the climate effects will vary with the area
involved.

1 (h) It is the intent of the Legislature that the State Air Resources Board design
2 emissions reduction measures to meet the statewide emissions limits for
3 greenhouse gases established pursuant to this division in a manner that minimizes
4 costs and maximizes benefits for California’s economy, improves and modernizes
5 California’s energy infrastructure and maintains electric system reliability,
6 maximizes additional environmental and economic co-benefits for California, and
7 complements the state’s efforts to improve air quality.

8 As explained in the Senate Floor Analysis for AB 32 (Petitioner’s Request for Judicial
9 Notice (“Petitioner’s RJN”), ¶ 1 and Exhibit A):

10 The best available science establishes that GHG-induced climate change is
11 occurring and *is fast approaching a critical 'tipping point' and* that California has
12 a substantial stake in *taking every possible action at the earliest juncture* to
13 mitigate the potentially devastating impacts - economic as well as environmental -
14 of climate change. (*Id.* at p. 5 [emphasis added].)

15 AB 32 set a specific goal to be attained through its provisions: that by the year 2020, the
16 state achieve a statewide reduction in greenhouse gas emissions to the level identified for 1990.
17 (Health & Safety Code § 38550.) While that goal would remain in effect unless otherwise
18 amended or repealed (Health & Safety Code § 38551 (a)), beyond 2020, ARB was only charged
19 with making recommendations to the Governor and the Legislature about how to continue
20 progress in reducing GHG levels. (*Id.*, subd. (c).)

21 **III. THE CLIMATE CHANGE SCOPING PLANS.**

22 As part of the overall regulatory scheme it enacted, AB 32 charged ARB with preparing
23 and adopting a Scoping Plan on or before January 1, 2009. (Health & Safety Code § 38561.)
24 The scoping plan was to identify how to achieve “the maximum technologically feasible and
25 cost-effective reductions in greenhouse gas emissions from sources or categories of sources of
26 greenhouse gases *by 2020* under this division.” (*Id.* at subd. (a) [emphasis added].) The Scoping
27 Plan was to include not only proposals for direct emission reduction measures, but also
28 alternative compliance mechanisms, market-based compliance mechanisms, and potential
29 monetary and nonmonetary incentives that ARB found necessary or desirable to help achieve the
maximum feasible, cost-effective reductions in GHG emissions by 2020. (*Id.*, subd. (b).) The
Scoping Plan was also to be updated every five years (*Id.* subd. (h)), presumably to reflect
changes in the science underlying climate change prevention as well as other factors that might

1 affect recommendations on the most feasible and cost-effective ways to quickly reduce GHG
2 emissions.

3 A. THE 2008 SCOPING PLAN

4 ARB prepared and adopted its initial Scoping Plan in 2008. (1 AR 428 *et seq.*) That
5 plan’s approval was challenged by a petition for writ of mandate, which was granted in part.
6 (*AIR, supra*, 206 Cal.App.4th at p. 1493.) The trial court found no violations of the Act’s
7 requirements, but did find that ARB’s environmental analysis violated CEQA for failing to
8 adequately consider alternatives to a statewide “cap and trade” program. (*Id.*) ARB revised and
9 reapproved its environmental analysis in accordance with the trial court’s writ (*Id.* at p. 1494; 1
10 AR 580 *et seq.*), while the court of appeal affirmed the trial court’s finding of compliance with
11 AB 32. (*Id.* at p. 1505.)

12 The 2008 Scoping Plan included constructing the California High-Speed Rail System
13 (hereinafter, “System”) as an identified proposal for reducing emissions by 2020. (1 AR 363,
14 502; see also *Id.* at p. 394 [listing of impacts from System identified in the California High-
15 Speed Rail Authority’s (“CHSRA”) 2005 statewide programmatic EIR for the System and
16 incorporated by reference into ARB’s 2008 EA/FED].) That was not surprising. The Legislature
17 had recently enacted AB 3034, placing a \$9.95 billion bond measure, Proposition 1A, on the
18 ballot to help fund construction of the System; and the voters had narrowly approved that
19 measure. (Petitioner’s RJN, ¶ 2 and Exhibits B and C.) The ballot measure’s title and summary,
20 written by the Legislature⁸, stated that the System would “Reduce air pollution and global
21 warming greenhouse gases.” In an uncodified section of AB 3034, the Legislature stated its
22 intent that the complete System be up and running by 2020:

23 It is the intent of the Legislature that the entire high-speed train system shall be
24 constructed as quickly as possible in order to maximize ridership and the mobility
25 of Californians, and that it be completed no later than 2020, and that all phases
26 shall be built in a manner that yields maximum benefit consistent with available
27 revenues. (AB 3034, chaptered as Stats. 2008, Chap. 267, Section 8(f).)

28 ⁸ See, *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110 [Legislature acted
29 improperly in usurping Attorney General’s role in writing title and summary of ballot measure].

1 While the construction schedule had already slipped from that ambitious goal, the 2008
2 Scoping Plan still expected Phase I of the System, extending from San Francisco through Los
3 Angeles to Anaheim, to be operational and reducing GHG emissions by 2020. (1 AR 502; 23
4 AR 12935 [staff analysis of operational effects of GHG production].)

5 B. THE 2014 FIRST UPDATED SCOPING PLAN

6 ARB began preparing an updated Scoping Plan in 2013. In August of that year,
7 Petitioner submitted early comments, specifically pointing to the inappropriateness of continuing
8 to include constructing the System in the scoping plan. (52 AR 29491.) Those comments were
9 apparently ignored, because when ARB released a Discussion Draft Climate Change Scoping
10 Plan First Update in October 2013 (12 AR 6286 *et seq.*), constructing the System remained
11 included. (*Id.* at pp. 6384, 6483, 6484, 6525.) Likewise, the draft First Updated Scoping Plan,
12 released in February 2014 (“Updated Scoping Plan” 12 AR 6409 *et seq.*), also included
13 construction of the System as a GHG Emissions Reduction Measure.

14 In support of including the System in the Updated Scoping Plan, CHSRA submitted a
15 report intended to show that the System would be effective as a GHG Emissions Reduction
16 Measure. (21 AR 11656 *et seq.*)⁹

17 Petitioner submitted comments on the Draft Updated Scoping Plan pointing out that
18 CHSRA’s report was grossly inaccurate, misleading, and deceptive, and that GHG emissions
19 from high-speed rail construction had been grossly underestimated in both that report and the
20 Draft Updated Scoping Plan. TRANSDEF’s comments went on to state that if properly
21 considered, construction would actually cause a significant *increase* in GHG production. (57 AR
22 32319 *et seq.* [including attachments]) The only official acknowledgment of those comments
23 was the following dialogue between the ARB Chairperson and ARB’s legal counsel at the final
24 public hearing before approving the Updated Plan and its EA:

25 CHAIRPERSON NICHOLS: ... One of the things I want to ask about is -- because this is
26 relatively new to us, we went through an environmental analysis and received comments
27 on that. And there have been a few references made to that today, so I would like to turn
to our legal counsel just to make sure that we do this properly as we move on the scoping

28 ⁹ The record also includes a cover letter for the report’s submission to the Legislature (21 AR
29 11652) and a letter from ARB’s chair accepting and praising the report. (21 AR 11654.)

1 plan.
2 So Ms. Brown.

3 STAFF COUNSEL MORKNER-BROWN: Hi. Yes. We did do an environmental
4 analysis as staff presented and we received seven comment letters, which we responded
5 to in writing, which you have before you. Part of the resolution vote is approving those as
6 required by our certified regulations to comply with CEQA.
7 And I think the -- you know, we addressed those issues as we saw by the testimony by
8 Brian Nowicki. We addressed their concerns with a small change to the update itself.
9 And as far as the comment, there was one comment where I wasn't clear they were
10 raising about our environmental analysis or the high-speed rail environmental document.

11 CHAIRPERSON NICHOLS: Yes. Yes.

12 STAFF COUNSEL MORKNER-BROWN: That wasn't exactly clear. But just to clarify,
13 that high-speed rail was identified in the 2008 plan, analyzed at that time. The appendix
14 to this environmental analysis refers to that document and that's -- that wasn't
15 reconsidered at this time. (56 AR 31216-17.)

16 On May 22, 2014, ARB approved the Updated Plan and its Final Environmental
17 Analysis¹⁰ (1 AR 1), after which Petitioner timely filed its lawsuit.

18 **IV. CALIFORNIA'S HIGH-SPEED RAIL PROJECT**

19 In 1996, the Legislature established CHSRA and designated it to plan, develop, and
20 implement an intercity high-speed rail network within California. (Public Utilities Code §§
21 185030, 185032.) In 2005, CHSRA approved a high-level programmatic EIR for the statewide
22 System, except its entry into the San Francisco Bay Area. In 2008, CHSRA approved a
23 supplemental Program EIR for the Bay Area – Central Valley portion. However, that EIR was
24 subjected to legal challenges (*See, Town of Atherton v. California High-Speed Rail Authority*
25 (“*Atherton*”) (2014) 228 Cal.App.4th 314) and was not finally approved until 2012; nor were
26 any project-level EIRs certified until 2012. (1 AR 398 [certification of project EIR for Merced –
27 Fresno segment].)

28 Also in 2008, the Legislature enacted AB 3034, which placed on the ballot Proposition
29 1A, a \$9.95 billion general obligation bond measure to help fund the planning and construction
of CHSRA's high-speed rail system. (Streets & Highways Code §§ 2704 *et seq.*) The proposed

¹⁰ Under § 15251 of the CEQA Guidelines, ARB qualified to prepare Functional Equivalence Documents (“FED”) instead of Environmental Impact Reports (“EIR”). ARB denotes such a document as an Environmental Analysis (“EA”).

1 System would include service between San Francisco, San Jose, Los Angeles, Anaheim, San
2 Diego, and the Central Valley. (Streets & Highways Code § 2704.04(a).)

3 As explained earlier, the entire System was originally planned for completion by 2020.
4 However, even by the time the 2008 Scoping Plan was approved, this had been pared back to
5 completion of Phase I (San Francisco – Los Angeles – Anaheim) by 2020. (1 AR 502.) By the
6 time the 2014 Updated Scoping Plan was approved, Phase I had been reduced to providing high-
7 speed rail service only between San Francisco and Los Angeles, and its start-date had been
8 pushed back to 2029. In addition, an even shorter segment, the Initial Operating Section (“IOS”)
9 had been proposed as a first operational high-speed rail segment, running between Merced and
10 San Fernando; but even that was only scheduled for completion in 2022. (21 AR 11663; 27 AR
11 14782-14783.) In addition, to reduce costs and speed completion, the Phase I segment between
12 San Jose and San Francisco had been scaled back from full dedicated high-speed rail tracks to a
13 “blended system,” where high-speed rail trains would share tracks with conventional Caltrain
14 commuter trains and Union Pacific freight trains. (21 AR 11663; 57 AR 32353.)

15 As noted earlier, the Legislature had itself touted the System’s beneficial impact on GHG
16 emissions in the title and summary it wrote for Proposition 1A. However, by 2012, it appeared it
17 might be having some second thoughts. In connection with adoption of the 2012 budget,
18 CHSRA and the Governor had raised the possibility of providing “back-up” funding for high-
19 speed rail construction using revenue generated by the state’s newly-approved GHG cap and
20 trade program. The Legislative Analyst’s Office published a report raising questions about using
21 cap and trade funds for this purpose. (57 AR 32351 *et seq.*) The report noted three concerns:

- 22 • Would not achieve primary goal of AB 32 to reduce GHG emissions before 2020.
- 23 • Other GHG reduction strategies likely to be more cost-effective.
- 24 • HSR would initially increase GHG emissions for many years. (57 AR 32358)

25 Perhaps in response, in adopting SB 1029, the 2012 legislative appropriation for high-
26 speed rail construction, the Legislature mandated that:

27 On or before June 30, 2013, the High-Speed Rail Authority shall prepare and
28 submit a report approved, as consistent with the criteria in this provision, by the
29 Secretary of Business, Transportation and Housing that provides an analysis of
the net impact of the high-speed rail program on the state's greenhouse gas

1 emissions. The report shall be submitted to the Senate Committee on
2 Transportation and Housing, the Assembly Committee on Transportation, and the
3 Senate and Assembly committees on budget. (SB 1029, Section 9 (Item 2665-
4 306-6043), provision 10 [Exhibit D to Petitioner’s RJN].)

5 That report (21 AR 11656 et seq.) represented to the Legislature and ARB that CHSRA’s
6 high-speed rail project would reduce GHG emissions. Petitioner, however, presented ARB with
7 evidence showing that CHSRA’s analysis was inaccurate in that it ignored the GHG emissions
8 involved in producing the many thousands of tons of cement needed to build the system.
9 Consequently, construction of the System would, during the crucial years between 2014 and
10 2020, cause a net *increase* in GHG production, contrary to the intent of AB 32. (57 AR 32334-
11 32336.) Indeed, Petitioner’s evidence showed that it would take literally decades to offset those
12 construction-associated increases by any reductions in GHG generation associated with the
13 System’s operation. (57 AR 32348.) No rebutting evidence was introduced.

14 **V. HISTORY OF THE CASE.**

15 The case was initially filed in Fresno County Superior Court, Fresno County being the
16 place where construction of the System was beginning. It named ARB and the State Controller
17 as Respondents, and CHSRA as a real party in interest. CHSRA requested that the case be
18 transferred to Sacramento County Superior Court, and Petitioner, in the interest of cooperation,
19 stipulated to that transfer.

20 Both CHSRA and ARB demurred to the Fourth and Fifth Causes of Action, which
21 involved compliance with the Act. The Court sustained both demurrers with leave to amend, but
22 Petitioner opted to eliminate the Fifth Cause of Action. With the removal of that claim, the State
23 Controller was dismissed from the case. Petitioner filed a First Amended Petition, against
24 which CHSRA threatened a second demurrer. The parties then stipulated to the filing of a
25 Second Amended Petition, and after its filing, CHSRA requested, and Petitioner agreed, to
26 dismiss it from the case.

27 Petitioner prepared the administrative record for the case, which ARB certified, and the
28 two parties stipulated to a briefing and hearing schedule.
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STANDARD OF REVIEW

Adoption of a Scoping Plan is a quasi-legislative administrative action. (*AIR, supra*, 206 Cal.App.4th at p. 1494.) Under the well-established standards for reviewing such decisions, the Court follows a two-step process. (*Id.*) The first step is to determine if the agency’s action fell within the bounds of what the Legislature had authorized. In making this determination, which is purely legal, the Court exercises its independent judgment (*Id.*)

If the agency’s action survives this first test, the second step is a much more deferential determination of whether the agency’s action was reasonably necessary to accomplish the statute’s purpose and was supported by substantial evidence. (*Id.*)

On the CEQA causes of action, the standard of review is equally well defined. Under Public Resources Code § 21168.5, the standard of review is abuse of discretion, which includes determining whether the agency has proceeded in the manner required by law and whether the agency’s determination was supported by substantial evidence in the record.

Since the determination of whether the agency proceeded in the manner required by law is a purely legal determination, the Court again here exercises its independent judgment, and no deference is given to the agency’s decision in that regard. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045.)

ARGUMENT

I. ARB’S ENVIRONMENTAL REVIEW FOR THE 2014 UPDATED SCOPING PLAN VIOLATED CEQA.

As noted, ARB prepared an EA to consider potential environmental impacts that could result from adoption of the Updated Scoping Plan. The Updated Scoping Plan, like the 2008 Scoping Plan, included among its GHG Emissions Reduction Measures the construction of the System. (13 AR 7041, 7081.) However, the EA for the Updated Scoping Plan, which explicitly supplemented the 2008 EA/FED and the 2011 Final Supplement to the 2008 EA/FED (1 AR 10), provided no discussion of the System’s impacts. Presumably this was because it relied on the analysis included in the EA/FED for the 2008 Scoping Plan. (See, 56 AR 31216-17.) However, under Public Resources Code § 21166, supplemental environmental review of a project must

1 occur if there have been: 1) changes to the project, 2) changes in the circumstances surrounding
2 the project, or 3) new information that indicates a new or significantly increased impact.
3 (*Friends of CSMG, supra*, 1 Cal.5th at p. 945.) Here, both the high-speed rail project and
4 circumstances surrounding the project had changed since 2008 in ways implicating new or
5 significantly increased impacts. Yet ARB continued to rely on the environmental assessment
6 from the 2008 Scoping Plan.

7 A. THE HIGH-SPEED RAIL PROJECT HAD BEEN DELAYED AND REDUCED
8 IN SCOPE FROM THE PROJECT CONSIDERED IN THE 2008 SCOPING
9 PLAN.

10 The high-speed rail project approved in 2008 had only had program-level environmental
11 review. (See, Final Program EIR/EIS for proposed California High-Speed Rail System, August
12 2005 – Stipulated AR document AREF 012001.) Consequently, only the general routing of the
13 line was known. Indeed, even the routing between the Central Valley and the San Francisco Bay
14 Area had not yet been decided. (See, *Atherton, supra*, 228 Cal.App.4th 314 [appeal of partially
15 successful challenge to 2010 revision to 2008 program EIR for Bay Area to Central Valley High-
16 Speed Train Project].)

17 However, Proposition 1A, the \$9.95 billion bond measure intended to partially fund
18 construction of the System, had just been approved by the voters. (1 AR 502.) The 2008
19 Scoping Plan’s inclusion of the high-speed rail project was premised on high-speed rail
20 construction beginning in 2010, with the full Phase I system (San Francisco – Los Angeles –
21 Anaheim) becoming operational in 2020. (*Id.*) Thus, while there might be an undefined amount
22 of CO₂ emissions associated with construction,¹¹ construction of Phase I would be finished by
23 2020. Once operational, Phase I was expected to contribute a one million metric ton reduction
24 in GHG emissions in its first year of operation. (*Id.*)

25
26 ¹¹ Given that only a programmatic analysis had been completed, construction impacts were only
27 discussed very generally, with more detailed discussion deferred to the project level. (See, *In re*
28 *Bay-Delta et al.* (2008) 43 Cal.4th 1143, 1169 [consideration of project-level impacts properly
29 deferred to project-level environmental review]; *Town of Atherton, supra*, 228 Cal.App.4th at pp.
346-347 [analysis of impacts associated with HSR project’s vertical alignment –e.g., location on
elevated structures or in tunnels – properly deferred to future project-level analysis].)

1 By 2014, the situation had changed radically. While some project-level EIRs had been
2 prepared, and that for the Merced to Fresno segment had been certified and survived a court
3 challenge (1 AR 398), the first construction contract had only just been signed in 2013 (13 AR
4 7036) and no actual construction had yet begun. Operation of even the Initial Operating
5 Segment (Merced – San Fernando) was not expected to start until 2022, and service between San
6 Francisco and Los Angeles (without extension to Anaheim) would not begin until 2029. (13 AR
7 7041.)

8 In addition, as noted earlier, CHSRA had adopted a “blended system” approach, where
9 conventional Caltrain commuter trains, Union Pacific freight trains, and CHSRA’s high-speed
10 rail trains would share a single set of electrified tracks. (13 AR 7040.) The reductions in speed
11 and train frequencies dictated by adoption of the blended system would reduce the expected
12 high-speed rail ridership. That, in turn, would make high-speed rail less effective in reducing
13 GHG emissions. (See, 57 AR 32336 [decreasing ridership increases the “payback period” before
14 operational GHG emission reductions would offset construction-related GHG emissions]; 57 AR
15 32346-32348 [analysis of “payback period” sensitivity to high-speed rail ridership levels].)

16 B. THE HIGH-SPEED RAIL PROJECT APPROVED IN THE 2014 UPDATED
17 SCOPING PLAN WOULD ACTUALLY INCREASE CO₂ EMISSIONS BY
18 2020.

19 The delays in the high-speed rail construction schedule meant that by 2020, the Act’s
20 deadline for reducing GHG emissions to 1990 levels, high-speed rail service would not yet have
21 begun. Consequently, high-speed rail could no longer be expected to contribute to a reduction in
22 GHG emissions.¹² To the contrary, the unrebutted evidence in the record indicated that the
23 project would result in a significant *increase* in GHG emissions – a significant new impact that
24 was not disclosed. (57 AR 32335-32336.)

25 TRANSDEF submitted both oral and written comments on the Updated Scoping Plan and
26 its EA. (55 AR 31149:18 – 31151:14; 57 AR 32319 *et seq.*) While the comments addressed

27 _____
28 ¹² The 2008 Scoping Plan’s analysis of the GHG emissions effects of the high-speed rail project
29 was based solely on the operation of the completed Phase I system. (23 AR 12935 [Appendix I –
Measure Documentation].)

1 several aspects of the Scoping Plan and its EA, a major focus was the unsuitability of the System
2 for inclusion in the Scoping Plan and the inadequacy of the EA’s analysis of the GHG emissions
3 impacts of constructing the System. (55 AR 31150:10 – 31151:8; 57 AR 32321-2, 32325, 32332
4 - 32350.) TRANSDEF’s written comments noted that no high-speed rail service was planned on
5 the first twenty-nine mile long construction segment, CP1. (57 AR 32333.) Indeed, there would
6 not even be high-speed rail service on the entire 130 mile long Initial Construction Section.
7 High-speed rail service would only begin with the completion of the IOS, in 2022. (21 AR
8 11665.) Thus constructing the System could not result in any reductions in business-as-usual
9 GHG emissions until well after the Act’s 2020 deadline.

10 As it pointed out in its GHG emissions report, CHSRA had committed itself to fully
11 offsetting any *direct* GHG construction impacts. “While construction activities will generate
12 GHG emissions, when coupled with the Authority’s strategy, the result is zero net *direct*
13 construction GHG emissions.” (21 AR 11668 [emphasis added].) However, CHSRA asserted
14 that the *indirect* GHG emission impacts from production of construction materials, and
15 specifically cement manufacturers, “are usually the reporting responsibility of the manufacturer,
16 and in terms of a project GHG emissions inventory, happen ‘upstream’ and outside the boundary
17 of the project.” (21 AR 11669.)

18 CHSRA’s report ignored the fact that protocols for determining GHG emissions
19 generally use a lifecycle assessment “cradle to grave” approach, looking not only at direct
20 project emissions but also at emissions involved in creating and disposing of project materials.
21 (42 AR 24218 *et seq.*; see also, e.g., 19 AR 10256 [National Academy of Sciences, National
22 Academy of Engineering, National Research Council treatise, “America’s Energy Future”]; 41
23 AR 23449; 51 AR 28784 – 28795 [application to waste management GHG emissions]; 54 AR
24 30427 – 30432 [application to alternative fuels GHG emissions].)

25 Thus, automobile-related transportation GHG emissions would include not only
26 emissions from fuel consumption, but also those for fuel extraction, refinement and transport,
27 roadway construction and maintenance, and automobile manufacture and disposal. (42 AR
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1 24010.) In other words, the standard for evaluating GHG emissions is a lifecycle assessment
2 analysis. CHSRA’s analysis is explicitly deficient in this regard.

3 ARB’s analysis of including constructing the System as a GHG Emissions Reduction
4 Measure in the EA for the Updated Scoping Plan is similarly deficient. Under CEQA, both
5 direct and indirect project impacts must be disclosed. (CEQA Guidelines §15064(d)(2) and (3).)

6 An EIR is to disclose and analyze the direct and the reasonably foreseeable
7 indirect environmental impacts of a proposed project if they are significant.
8 (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1
9 Cal.App.5th 677, 684.)

10 As TRANSDEF’s comment letter and the Chester & Horvath paper quoted in it pointed
11 out, constructing the System would require the production of many thousands, if not millions, of
12 tons of cement, with its associated GHG emissions. The necessary increase in cement
13 production, with its associated massive GHG emissions,¹³ is an indirect impact of the high-speed
14 rail project and should have been considered and analyzed in the EA.

15 Chester & Horvath estimate cement manufacture accounts for 67% of GHG emissions
16 during construction, with steel manufacture accounting for another 9% (57 AR 32343). Thus
17 indirect emissions constitute 76% of total construction emissions. Conversely, direct GHG
18 impacts are less than ¼ of total construction GHG emission impacts. None of these indirect
19 emissions are addressed by CHSRA’s “zero emissions” pledge. The EA for the 2014 Updated
20 Scoping Plan failed to disclose or discuss this significant impact. This was a clear and direct
21 violation of CEQA.

22 C. THE EA FAILED TO CONSIDER FEASIBLE MITIGATION MEASURES
23 FOR THE HIGH-SPEED RAIL PROJECT’S SIGNIFICANT INDIRECT
24 CONSTRUCTION GHG EMISSIONS IMPACT.

25 When an EIR (or functional equivalent document) identifies a potentially significant
26 impact, it is required to consider feasible mitigation measures that could reduce that impact.
27 While CHSRA’s high-speed rail project included offsets to mitigate that project’s significant

28 ¹³ In 2020, then-existing cement production in California was projected to release nine million
29 metric tons of CO₂, roughly 10% of baseline industrial CO₂ production, which, in itself,
represents 20% of California’s total GHG emissions. (2 AR 651, 652.)

1 direct GHG construction impacts, no such offsets, nor any other mitigation measures, were
2 included or considered by either CHSRA or ARB for the indirect GHG impacts associated with
3 cement manufacturing required for the project's construction. This was a second CEQA
4 violation.

5 D. THE EA FAILED TO CONSIDER ELIMINATING THE HIGH-SPEED RAIL
6 PROJECT AS AN ALTERNATIVE THAT WOULD ELIMINATE THAT
7 PROJECT'S INDIRECT GHG EMISSIONS CONSTRUCTION IMPACT.

8 In addition to considering mitigation measures, CEQA requires that an EIR (or functional
9 equivalent document) consider a reasonable range of feasible alternatives that might avoid a
10 significant impact. Here, the obvious alternative, as suggested by TRANSDEF, was to remove
11 the high-speed rail project from the 2014 Updated Scoping Plan. (57 AR 32321, 32325.) The
12 failure to even consider this obvious and clearly feasible alternative again violated CEQA.

13 E. THE EA FAILED TO PROVIDE AN ADEQUATE RESPONSE TO
14 TRANSDEF'S COMMENTS.

15 As part of the public's participation in the EIR process, CEQA allows the public to
16 submit comments, both orally and in writing, on the proposed project and its environmental
17 review. The Final EIR (or functional equivalent document) must include reasoned written
18 responses to each comment submitted during the public comment period for the draft EIR.
19 (Public Resources Code § 21091; CEQA Guidelines § 15088; *Pfeiffer v. City of Sunnyvale City*
20 *Council* (2011) 200 Cal.App.4th 1552, 1567.) The Draft EA for the Updated Scoping Plan was
21 circulated between March 14th and April 28th 2014. (12 AR 6216.) TRANSDEF's comment
22 letter (with attachments) was submitted, via e-mail, on April 7, 2014 – well within the comment
23 period. (57 AR 32077.) Nevertheless, perhaps because it was not explicitly identified as a
24 comment letter on the EA, no written response was provided. ARB's only response to
25 TRANSDEF's oral and written comments was a short, dismissive oral comment, quoted earlier
26 in this brief, at the final public hearing. (56 AR 31216-17.)

27 CEQA does not require that comment letters be explicitly labeled as such. The
28 TRANSDEF comment letter, while it did discuss the Updated Scoping Plan, also explicitly
29 commented on the inadequacy of the discussion of GHG emissions impacts from inclusion of

1 constructing the high-speed rail project as a GHG Emissions Reduction Measure.¹⁴ In addition,
2 TRANSDEF’s oral comments at the final public hearing (55 AR 31150:10 – 31151:3) made
3 crystal clear that its comments related to the EA as well as the Updated Scoping Plan. The
4 colloquy between ARB’s chair and its legal counsel (56 AR 31216-17) followed TRANSDEF’s
5 comments. At that point, it would still not have been too late for ARB to reconsider and
6 provided a written response to TRANSDEF’s comments. It chose not to do so. The failure to
7 provide a written response was yet another violation of CEQA.

8 F. ARB ERRED IN FAILING TO RECIRCULATE THE EA AFTER
9 TRANSDEF’S COMMENTS IDENTIFIED THE SIGNIFICANT GHG
10 EMISSIONS IMPACT ASSOCIATED WITH THE HIGH-SPEED RAIL
PROJECT.

11 Under *Laurel Heights Improvement Assn. v. Regents of University of California* (“*Laurel*
12 *Heights II*”) (1993) 6 Cal.4th 1112 and CEQA Guidelines § 15088.5, the lead agency is required
13 to recirculate an EIR if significant new information is added to the EIR after it has been
14 circulated for public review and comment and the new information changes the EIR in a way that
15 would otherwise deprive the public of a meaningful opportunity to comment on a substantial
16 adverse effect or a way to mitigate or avoid that effect that the project’s proponents declined to
17 adopt.

18 Here, TRANSDEF’s comments on the draft EA pointed out a previously-undisclosed
19 significant indirect impact – the release of CO₂ during the manufacture of the many thousands, if
20 not millions, of tons of cement needed for track footings, viaducts, tunnels, and other structures.
21 Data and conclusions from the Chester and Horvath paper, quoted in those comments, showed
22 that because of that large release of CO₂ during construction, the high-speed rail project would
23 not result in a net reduction in GHG emissions until decades after its began operation. (57 AR
24

25
26 ¹⁴ It is very common for a comment letter to comment both on the project and its environmental
27 review. Comments on the project are generally responded by either noting that they will be
28 considered by the agency or simply stating, “comment noted.” Ignoring a comment is not,
29 however, a permissible response. (*See, Environmental Protections & Information Center v.*
California Dept. of Forestry & Fire Protection (“*EPIC*”) (2008) 44 Cal.4th 459, 487 [failure to
respond to a relevant comment is presumed prejudicial].)

1 3235-3236; see also 57 AR 32340-32350.) The EA’s analysis, carried over from the 2008
2 Scoping Plan’s EA/FED, had totally ignored GHG emissions impacts from construction.

3 The disclosure of this new and significant impact should have not only required a written
4 response from ARB, it should also have required recirculation of the EA so that other agencies
5 and the public had the opportunity to understand and comment on the newly disclosed impact, its
6 significance, and how it might be mitigated or avoided. The failure to recirculate was yet
7 another violation of CEQA.

8 **II. THE FINDINGS SUPPORTING APPROVAL OF THE EA WERE DEFECTIVE.**

9 As is required under CEQA (Public Resources Code § 21081), ARB made findings to
10 support its approval of its EA. (1 AR 10-21.) Those findings also included a Statement of
11 Overriding Considerations identifying the reasons ARB was approving the Updated Scoping
12 Plan in spite of impacts which ARB had found significant and unavoidable. (1 AR 21.)
13 However, the findings adopted by ARB made no mention of the significant secondary GHG
14 emissions impact associated with construction of the high-speed rail project. Further, the
15 Statement of Overriding Considerations was defective not only in failing to identify and weigh
16 the adverse GHG emissions impact associated with construction of the high-speed rail project
17 but also for asserting that the Scoping Plan would forge a cleaner, healthier and more sustainable
18 future when inclusion of construction of the high-speed rail project would, to the contrary
19 increase the State’s GHG emissions, which would make California’s future less sustainable,
20 rather than more. For these reasons, the findings were defective and must be ordered rescinded
21 and reconsidered.

22 **III. INCLUSION OF THE HIGH-SPEED RAIL PROJECT IN THE 2014 UPDATED**
23 **SCOPING PLAN VIOLATED THE REQUIREMENTS OF THE ACT.**

24 As noted earlier, the Legislature, in the Act, placed specific requirements on the contents
25 of the Scoping Plan. (Health & Safety Code § 38561.) A central requirement was that the
26 Scoping Plan propose measures that would provide for “the maximum technologically feasible
27 and cost-effective reductions in greenhouse gas emissions from sources or categories of sources
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1 of greenhouse gases by 2020 under this division.” (*Id.*, subd. (a).) As was explained in the
2 Senate Floor Analysis for AB 32:

3 ...GHG-induced climate change is occurring and *is fast approaching a critical*
4 *'tipping point'* and that California has a substantial stake in *taking every possible*
5 *action at the earliest juncture* to mitigate the potentially devastating impacts -
6 economic as well as environmental - of climate change. (Exhibit A to Petitioner’s
7 RJN at p. 5 [emphasis added].)

8 From that standpoint, the Legislature’s choice to include a specific time deadline for
9 achieving the GHG reductions included in the Scoping Plan reflected the Legislature’s judgment
10 of the importance of reducing GHG emissions “at the earliest juncture.” A measure that would
11 not reduce GHG emissions until some twenty or thirty years later could not qualify as a GHG
12 Emissions Reduction Measure under the requirements of § 38561(a). That would be all the more
13 true if the measure would actually increase GHG emissions during the crucial years prior to
14 2020.

15 ARB may argue that it, or CHSRA, has the authority to interpret § 38561 to allow as a
16 GHG Emissions Reduction Measure a measure that would only reduce GHG emissions long
17 after 2020. However, such statutory interpretation issues are for the courts, not administrative
18 agencies, to determine. (*State Building & Construction Trades Council of California v. Duncan*
19 (2008) 162 Cal.App.4th 289.) Neither the statutory language nor the legislative history of the
20 Act’s enactment would allow an interpretation so directly contrary to the statutory language.

21 As has already been explained in detail, construction of CHSRA’s System is precisely
22 such a nonqualifying measure. A System that could not carry passengers because it was still
23 under construction obviously could not take cars off the road and reduce auto-related GHG
24 emissions. No high-speed rail passenger service could be expected until at least 2022, when the
25 IOS was expected to begin carrying passengers.¹⁵

26 Certainly, the Act allowed ARB to make recommendations for future long-term measures
27 intended to extend GHG emissions reductions beyond the 2020 deadline, including setting a

28 ¹⁵ It might be noted parenthetically that CHSRA’s construction schedule has now slipped even
29 further, and that, under CHSRA’s final 2016 Business Plan, the first operating segment (now San
Jose to Shafter) is not expected to begin commercial operation until 2025.

1 2050 GHG emissions reduction goal and recommending legislative and executive actions needed
2 to meet that goal. However, both the Legislature and ARB intended that measures included in
3 the Scoping Plan as GHG Emissions Reduction Measures be tailored to meet the Act’s specific
4 requirement that they achieve the maximum technologically feasible and cost-effective
5 reductions in GHG emissions by 2020. The unrebutted evidence in the record demonstrates
6 conclusively that construction of CHSRA’s high-speed rail project fails to meet this requirement.
7 Its inclusion in the Updated Scoping Plan as a GHG Emissions Reduction Measure therefore
8 violated the Act and must be reversed.

9 **CONCLUSION**

10 TRANSDEF does not oppose, and indeed strongly supports, *almost* all of the Updated
11 Scoping Plan; but TRANSDEF opposes inserting a measure into the Scoping Plan that does not
12 and cannot meet the requirements the Legislature set for GHG Emission Reduction Measures in
13 a Scoping Plan. ARB and CHSRA claim constructing high-speed rail will reduce GHG
14 emissions. The evidence shows it will not – at least not within the crucial time that the
15 Legislature specifically identified between 2014 and 2020.

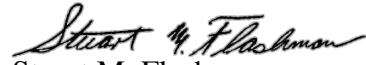
16 Instead, with GHG emissions already teetering near a dangerous tipping point, high-
17 speed rail construction will only make matters worse. It would be decades before any real
18 reduction in GHG emissions could be claimed, and by that time, as the Legislature understood in
19 writing the Act, the tipping point could already be long past.

20 In writing AB 32, the Legislature laid out very specifically what it expected to find in the
21 Scoping Plans presented to it by ARB – a set of GHG Emissions Reduction Measures designed
22 to feasibly and cost-effectively reduce GHG emissions by 2020. In placing high-speed rail
23 construction in the Updated Scoping Plan, ARB not only violated CEQA and AB 32, it also
24 misled the Legislature and the public into believing that funneling cap and trade auction proceeds
25 into high-speed rail construction would help achieve AB 32’s goals for reducing 2020 emissions
26 – when just the opposite was true. If AB 32’s 2020 GHG emissions reduction goals are to have
27 any chance of being met, both the legislature and the public need accurate information. The
28 Legislature also needs at least the chance to reconsider whether it wants, instead, to invest cap
29

1 and trade auction proceeds in projects that would actually help meet AB 32's ambitious 2020
2 goal. For all these reasons, ARB's decisions placing the high-speed rail project in the Updated
3 Scoping Plan, and approving its defective environmental review, must be reversed.

4 Dated: January 2, 2017

5 Respectfully submitted,

6 

7 Stuart M. Flashman
8 Attorney for Petitioner Transportation
9 Solutions Defense and Education Fund
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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the action involved herein. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On January 3, 2017, I served the within PETITIONER'S OPENING BRIEF; PETITIONER'S REQUEST FOR JUDICIAL NOTICE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DECLARATION OF AUTHENTICITY on the parties listed below by placing true copies thereof enclosed in sealed envelopes with first class mail postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Mark Poole, Deputy Attorney General
Office of the California Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Mark.Poole@doj.ca.gov

Kavita Lesser, Deputy Attorney General
Office of the California Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Kavita.Lesser@doj.ca.gov

In addition, on the above-same day, I also served the above-same documents, converted into pdf files, on the above-same parties via electronic service as e-mail attachments sent to the e-mail addresses shown above. I received no e-mail responses indicating that the e-mail had not been properly received.

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on January 3, 2017.



Stuart M. Flashman