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9 Acting Secretary of Business, Transportation and
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10 Chiang*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SACRAMENTO

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16 **JOHN TOS, AARON FUKUDA; AND
COUNTY OF KINGS, A POLITICAL
17 SUBDIVISION OF THE STATE OF
CALIFORNIA,**

18 Plaintiffs,

19 v.

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21 **CALIFORNIA HIGH SPEED RAIL
AUTHORITY; JEFF MORALES, CEO OF
22 THE CHSRA; GOVERNOR JERRY
BROWN; STATE TREASURER, BILL
23 LOCKYER; DIRECTOR OF FINANCE,
ANA MATOSANTOS; SECRETARY
24 (ACTING) OF BUSINESS,
TRANSPORTATION AND HOUSING,
25 BRIAN KELLY; STATE CONTROLLER,
JOHN CHIANG; AND DOES I-V,
26 INCLUSIVE,**

27 Defendants.
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Case No. 34-2011-00113919

**DECLARATION OF DANAE J.
AITCHISON**

Date: May 31, 2013

Time: 9:00 a.m.

Dept: 31

Judge: Hon. Michael P. Kenny

Trial Date: May 31, 2013

Action Filed: November 14, 2011

1 I, Danae J. Aitchison, declare as follows:

2 1. I am one of the Deputy Attorneys General assigned to represent defendant California
3 High-Speed Rail Authority (hereinafter "Authority") in the California Environmental Quality
4 litigation challenging the adequacy of the Authority's Bay Area to Central Valley program-level
5 environmental impact report for the high-speed rail project. If called to testify, I can competently
6 testify to the facts set forth below.

7 2. In *Town of Atherton et al. v California High-Speed Rail Authority* (case no. 34-2008-
8 80000022) (hereinafter "Atherton"), the Court issued a final judgment on November 3, 2009,
9 granting in part and denying in part the petitioners' challenge to the Bay Area to Central Valley
10 program-level environmental impact report. A true and correct copy of the judgment is attached
11 to defendants' Request for Judicial Notice, as Exhibit 4.

12 3. On May 6, 2010, Atherton petitioners filed a petition for writ of error coram nobis
13 seeking to reopen the November 3, 2009, judgment asserting that it had learned of newly-
14 discovered evidence indicating that the ridership model, which generated forecasts used in the
15 program-level environmental impact report, was flawed. On August 20, 2010, the court denied
16 the petition, holding in part that the Atherton petitioners had an alternative legal remedy available
17 because the Authority was revising its program environmental impact report based on the
18 November 3, 2009, final judgment. A true and correct copy of the ruling denying the petition for
19 writ of error coram nobis is attached to defendants' Request for Judicial Notice, as Exhibit 5.
20 Notice of entry of the final order denying the petition for writ of error coram nobis was served on
21 September 15, 2010. A true and correct copy of the notice is attached to defendants' Request for
22 Judicial Notice, as Exhibit 6. Atherton did not appeal from this ruling on the petition, and it is a
23 final ruling.

24 4. On September 23, 2010, and October 4, 2010, prior to release of the funding plan in
25 November 2011, Atherton petitioners objected to the Authority's return to writ of mandate on the
26 grounds that the revised program-level environmental impact report included ridership and
27 revenue forecasts generated by a flawed model. Specifically, Atherton petitioners claimed the
28 ridership model was defective because: (1) the frequency of service (or "headway") coefficient

1 was improperly inflated and constrained without supporting evidence; (2) mode-specific
2 constants were included in the model without substantial supporting evidence; and (3) the
3 modeling used unrepresentative and biased data. On November 10, 2011, the court ruled that
4 substantial evidence supported the Authority's reliance on the ridership modeling. A true and
5 correct copy of the ruling is attached to defendants' Request for Judicial Notice, as Exhibit 7.
6 Notice of entry of order was served on February 14 2012. A true and correct copy of the notice of
7 entry of order is attached to defendants' Request for Judicial Notice, as Exhibit 8.

8 5. Atherton appealed from the part of the final order determining that substantial evidence
9 supported the ridership and revenue modeling. The appeal is fully briefed and pending in the
10 Court of Appeal of the State of California, Third Appellate District, case no. C070877. In its
11 opening and reply briefs on appeal, Atherton chose to address only the first of its three trial court
12 claims challenging the ridership model; that the modeling inflated and constrained the frequency
13 of service or "headway" coefficient without supporting evidence. Therefore, the trial court's
14 ruling as to the last two issues, asserting the model utilized mode-specific constants without
15 substantial supporting evidence and relied on unrepresentative and biased data, is final.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed on April
17 12, 2013 in Sacramento, California.

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20 DANAE J. AITCHISON

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