

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER** [X] Amended on 06/15/2012

DATE: 06/15/2012

TIME: 09:00:00 AM

DEPT: 44

JUDICIAL OFFICER PRESIDING: Robert Hight

CLERK: K. Wells

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: G. Toda

CASE NO: **34-2011-00113919-CU-MC-GDS** CASE INIT.DATE: 11/14/2011

CASE TITLE: **John Tos vs. California High Speed Rail Authority**

CASE CATEGORY: Civil - Unlimited

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EVENT ID/DOCUMENT ID: ,8076205

**EVENT TYPE:** Hearing on Demurrer - Civil Law and Motion - Demurrer/JOP

**MOVING PARTY:** California High Speed Rail Authority Chief Executive Officer Roelof Van Ark, Secretary Acting of Business Transportation and Housing Traci Stevens, State Controller John Chiang, Governor Jerry Brown, Director of Finance Ana Matasantos, State Treasurer Bill Lockyer

**CAUSAL DOCUMENT/DATE FILED:** Demurrer to 1st amended complaint, 01/19/2012

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**APPEARANCES**

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**Defendants California High-Speed Rail Authority (the "Authority"), Chief Executive Officer Roelof van Ark ("van Ark"), Governor Edmund G. Brown, Jr. ("Brown"), State Treasurer Bill Lockyer ("Lockyer"), Director of Finance Ana Matasantos ("Matasantos"), Acting Secretary of Business, Transportation and Housing Traci Stevens ("Stevens"), and State Controller John Chiang's ("Chiang") (collectively "Defendants") Demurrer to Plaintiffs' First Amended Complaint has been assigned to the Honorable Robert C. Hight, Department 44. Department 44 is dark on June 15, 2012. In the event any party requests oral argument, the matter will be heard in Department 44 on June 22, at 2:00 p.m. Per Local Rule 3.04(B), any request for oral argument must be made by 4:00 p.m. on June 14, 2012, to the courtroom clerk of Department 44 at (916) 874-8243.**

Defendants' demurrer is ruled upon as follows.

Defendants' Request for Judicial Notice is Granted. Plaintiffs' Request for Judicial Notice is Granted, with the exception of Exhibits 10, 11, 12, 13, 14, 15, 17, 18, 28, 30, 33, 34 and 35. In taking judicial notice of these documents, the court accepts the fact of their existence, not the truth of their contents. (See *Professional Engineers v. Dep't of Transp.* (1997) 15 Cal.4th 543, 590 [judicial notice of findings of fact does not mean that those findings of fact are true]; *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.)

Plaintiffs, John Tos ("Tos") and Aaron Fukuda ("Fukuda"), are taxpayers that live in Kings County. Plaintiff, the County of Kings (the "County"), is a political subdivision in the State of California. Plaintiffs Tos, Fukuda and the County are collectively referred to herein as "Plaintiffs." Plaintiffs contend that they are eligible to sue under CCP §526a and sue under that statute.

Plaintiffs allege that the Central Valley high speed rail project, Merced to Bakersfield segment, is not eligible to receive financial support from Prop 1A bond funds and that it would be illegal under Prop 1A and CCP §526a, to disburse or distribute Prop 1A bond funds to the Authority for the purpose of constructing a high-speed rail ("HSR") system in the Central Valley. Plaintiffs allege the following causes of action: (1) Declaratory Relief, (2) Declaratory Relief – Illegal to provide a subsidy under Prop

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DATE: 06/15/2012

MINUTE ORDER

Page 1

DEPT: 44

Calendar No.

1A and no Prop 1A funds can be provided since a subsidy will be required, (3) The funding plan of the Authority violates Prop 1A and therefore no Prop 1A bond funds can be released for the Central Valley Project, (4) Request for permanent injunction, (5) Request for writ of mandate/prohibition with appropriate relief, and (6) Private attorney general theory.

Defendants demur to each cause of action on the grounds that each fails to state facts sufficient to constitute a cause of action. Specifically, (1) each cause of action fails to allege facts indicating that the Authority has or will imminently spend public funds to construct the Central Valley HSR project in violation of the High Speed Rail Bond Act ("HSR Bond Act"), and (2) Plaintiffs lack standing to bring each cause of action, and (3) each cause of action fails to allege an actual case or controversy that is proper for court adjudication.

Defendants further demur to each cause of action against Defendants van Ark, Brown, Lockyer, Matosantos, Stevens and Chiang (collectively "Individual Defendants") on the grounds that: (1) these defendants cannot be sued for their exercise of legislative and executive discretion, and (2) these defendants have no authority under the HSR Bond Act to spend bond money to construct the high-speed rail.

#### Imminent Action

Code of Civil Procedure section 526a provides in pertinent part: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein." (CCP §526a) "The purpose of this statute, which applies to citizen and corporate taxpayers alike, is to permit a large body of persons to challenge wasteful government action that otherwise would go unchallenged because of the standing requirement." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal. App. 4th 1223, 1240.)

"The taxpayer action must involve an actual or threatened expenditure of public funds. General allegations, innuendo, and legal conclusions are not sufficient; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur." (*Id.* at 1240.)

Defendants contend that the FAC is deficient as Plaintiffs have not alleged specific facts showing that the Authority has, or imminently will, obtain permission to spend bond funds for the construction of the Central Valley HSR project without satisfying all of the statutory preconditions necessary to its authority to commit bond proceeds for real property or equipment acquisition or construction. Defendants further contend that before the Authority can spend bond money to construct the high-speed rail, five preconditions must be satisfied, such as approval and submittal of an initial detailed funding plan, request to the Legislature and Governor to appropriate bond proceeds, and approval and submission of a second detailed funding plan. (See Motion, 4:14-27.) Plaintiffs do not dispute these prerequisites. In their FAC, Plaintiffs allege that in November 2011, the Authority announced that it had approved a formal "funding plan" for the project. (See FAC, ¶ 10.) It is unclear from the FAC whether this funding plan was the "Initial Funding Plan" or the "Second Funding Plan" outlined in Defendants' Motion. (See Motion, 4:14-27.) Defendants contend that the November 2011 funding plan was the Initial Funding Plan, and that five additional preconditions must take place before the Authority has legal authority to spend bond funds. (See Motion, 10:15-19.) In Opposition, Plaintiffs state that the matter is "imminent" because "the Federal Transportation Secretary only a few days ago appeared before the legislature and in effect told them that they had to fund the project by July 1, or the federal government could withdraw its funds; all indications are that the state will act within weeks." (See Opposition, 11:13-16.)

The Court finds that Plaintiffs' allegations are deficient to show that the Authority has, or imminently will, obtain permission to spend bond funds for the construction of the Central Valley HSR project. Accordingly, Defendants' Demurrer to each cause of action is SUSTAINED with leave to amend. Leave to amend is granted as the Court is not yet convinced that Plaintiffs will be unable to amend the FAC to show imminent action.

### Standing

Defendants next contend that Plaintiffs do not have standing to assert the claims for violation of CCP §526a because they are not injured. Defendants claim that to have standing, Plaintiffs must have "an actual and substantial interest and stand to be benefited or injured by a judgment in order to state a claim for relief." (Motion, 11:8-13)(citing *Friendly Village Community Assn. Inc. v. Silva & Hill Co.* (1973) 31 Cal.App.3d 220, 22d.) In opposition, Plaintiffs contend that CCP §526a automatically grants standing to a resident taxpayer that has paid taxes in the past year. The Court is not persuaded by Defendants' argument. "In this state we have been very liberal in the application of the rule permitting taxpayers to bring a suit to prevent the illegal conduct of city officials, and no showing of special damage to the particular taxpayer has been held necessary." (*Blair v. Pitchess* (1971) 5 Cal. 3d 258, 268 (quoting *Crowe v. Boyle* (1920) 184 Cal. 117, 152.)

Plaintiffs further contend that although the County is not a taxpayer, it has an "interest" in the proceeding being brought by the other plaintiffs. The County alleges that its policies, rules and regulations will be interfered with when the project traverses the County; that it stands to lose property taxes through property devaluations when the project enters the County; and that its emergency fire, police and rescue operations will be seriously affected when the project enters the County and prevents access to the residents of the County. (FAC, ¶ 12.) Counties that have an "interest in the outcome" of the litigation have standing and need not establish a basis for standing as taxpayers under CCP §526a. (*City of Industry v. City of Fillmore* (2011) 198 Cal. App. 4th 191, 209.) Plaintiffs have sufficiently pled facts to show that they have standing.

Accordingly, Defendants' demurrer on this ground is OVERRULED.

### Actual Case or Controversy

Defendants next contend that there is no actual case or controversy that is ripe for the Court to review because Plaintiffs have not alleged that spending has occurred or will imminently occur. Plaintiffs contend that when taxpayers sue pursuant to CCP §526a and request declaratory relief, an "actual controversy" is presumed to exist, eliminating the requirement of proving "case or controversy." (Opposition, 8:16-18)(citing *Van Atta v. Scott* (1980) 27 Cal.3d 424, 450.) The Court agrees with Defendants. "[T]he taxpayer action must involve an actual or threatened expenditure of public funds." (*Waste Management of Alameda County, Inc, supra*, 79 Cal. App. 4th at 1240.) As noted above, the Court finds that Plaintiffs' allegations are deficient to show that the Authority has, or imminently will, obtain permission to spend bond funds for the construction of the Central Valley HSR project. Accordingly, Defendants' Demurrer to each cause of action is SUSTAINED with leave to amend. Leave to amend is granted as the Court is not yet convinced that Plaintiffs will be unable to amend the FAC to show imminent action.

### Individual Defendants

Defendants demur to each cause of action on the grounds that CCP §526a cannot be used to challenge the Individual Defendants exercise of legislative and executive discretion. CCP §526a "should not be applied to principally "political" issues or issues involving the exercise of the discretion of either the

legislative or executive branches of government." (*Humane Society of the United States v. State Bd. of Equalization* (2007) 152 Cal. App. 4th 349, 356.) Plaintiffs allege that the Individual Defendants "have a voice and decision-making authority on whether bond funds under Prop 1A should be allowed to be used for the purpose of constructing the Central Valley HRS project and to authorize release of said funds." (FAC ¶ 3.) As currently pled, Plaintiffs' allegations address the Individual Defendants' exercise of discretion, and fail to state claims for relief against these defendants. Accordingly, Defendants' demurrer on this ground is SUSTAINED with leave to amend. As this demurrer is Defendants' first objections to the FAC, the Court grants Plaintiffs leave to amend.

Defendants further demur to each cause of action against the Individual Defendants on the grounds that they lack any statutory authority to spend bond money to construct the Central Valley HRS Project. Plaintiffs have not addressed this argument in their opposition. The Court construes Plaintiffs' failure to oppose this argument as a concession on the merits. Accordingly, Defendants' demurrer on this ground is SUSTAINED with leave to amend. As this demurrer is Defendants' first objections to the FAC, the Court grants Plaintiffs leave to amend.

Where leave to amend is granted, Plaintiffs may file and serve an amended complaint by no later than June 29, 2012. Response to be filed within 15 days of service or the amended complaint, 20 days if served by mail. Although not required, Plaintiff should attach a copy of this minute order to the amended complaint to facilitate the filing of the document.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

**COURT RULING:**

The matter is continued to June 22, 2012 at 2:00 p.m. in Department 44 for oral argument.